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Infrastructure Investment and Jobs Act: Orrick

In November, the bipartisan Infrastructure Investment and Jobs Act (the “Act”) was enacted into law. In addition to reauthorizing existing programs, the Act adds $550 billion in funding for new infrastructure investments, including for transportation, water, power, renewable energy and broadband.

This summary discusses provisions of the Act of particular interest to the municipal finance industry, organized into two parts. First, a summary of provisions related to tax-exempt financing by state and local governments. The Act authorizes two new categories of tax-exempt bonds for broadband projects and carbon capture facilities, and also increases the national volume cap available for tax-exempt bonds issued for certain transportation projects, which are often used for projects involving public-private partnerships (“P3”). And second, a highlight of various provisions that provide funding to state, local and tribal governments for particular types of infrastructure. Since many of these provisions relate to new programs, federal agencies will be working through the rulemaking process to implement these new programs over the coming months.

Tax-Exempt Financing Provisions
The Act adds two new types of “exempt facility” bonds, and increases the federal volume cap for a third type. Most tax-exempt bonds are issued as “governmental” bonds subject to the private activity limitations imposed by Section 141 of the Code, which generally limit the amount of involvement of a private entity in the financed projects (i.e., limitations on private business use of the projects). Exempt facility bonds are a separate category of tax-exempt bonds, which are generally not subject to private business use or other private activity limitations, but can only be used to finance qualifying facilities, such as airports, solid waste, and multifamily housing, and are subject to additional requirements and restrictions, such as TEFRA approval and costs of issuance limitations. Several types of exempt facility bonds, including the new types authorized by the Act, may be issued to finance projects owned by a private entity.

Qualified Broadband Projects. The Act adds a new type of exempt facility bonds for qualified broadband projects. A qualified project must provide access to residential and/or commercial locations at speeds of not less than 100 megabits per second (“mbps”) downstream and 20 mbps upstream, and must provide access to locations that are currently underserved by broadband service. The project must be designed to provide service to one or more census block groups where more than 50% of residential households do not currently have access to fixed terrestrial broadband service delivering at least 25 mbps downstream and at least 3 mbps upstream, and at least 90% of the locations (residential or commercial) at which access will be provided are locations where a broadband service provider did not previously provide service of at least 25 mbps downstream and at least 3mbps upstream. In addition, before bonds are issued, the issuer must (i) notify all broadband service providers in the area of the planned project, (ii) request information from them on their ability to provide gigabit capable Internet access (1,000 mbps), and (iii) allow each provider at least 90 days to respond to the notice and request. These requirements have some interpretive questions that may require guidance from Treasury, but in advance of any guidance, it appears that these bonds would work well to finance land-based broadband infrastructure in geographic areas in which no broadband service is currently available.

Exempt facility bonds are usually subject to state volume cap limitations, but the Act provides for a 75% exemption from volume cap for privately owned broadband projects, such that only 25% of the volume cap is required, and a 100% exemption for governmentally owned projects, such that no volume cap is required.

Qualified Carbon Dioxide Capture Facilities. The Act adds a second new type of exempt facility bonds for qualified carbon dioxide capture facilities. Qualifying facilities can either be (i) components of an industrial carbon dioxide facility, or (ii) a direct air capture facility. The Act has a number of detailed requirements for qualifying facilities, some of which may require guidance from the Treasury Department to interpret.

An industrial carbon dioxide facility means a facility that emits carbon dioxide as a result of combustion, gasification, bioindustrial processes, fermentation, or certain types of manufacturing processes (but not including natural gas extraction and transportation). Eligible components for financing with these bonds include equipment used for the capture, treatment, purification, compression, transportation or storage of produced carbon dioxide, or certain components that are used to convert solid or liquid products made from coal, petroleum residue, biomass or other materials into a synthesis gas composed of primarily carbon dioxide and hydrogen for direct use or a subsequent chemical or physical conversion. The Act generally requires that eligible components of an industrial carbon dioxide facility must be at least 65% efficient in capturing and storing carbon dioxide, and for this purpose, storing carbon dioxide means injection into a facility for geologic storage, or injection into an enhanced oil or gas recovery well followed by geologic storage. To the extent the efficiency is less than 65%, only the corresponding percentage of the costs are eligible for financing (i.e., components that are 40% efficient can only have 40% of the costs financed with these exempt facility bonds).

Direct air capture facilities are defined by reference to Section 45Q(e)(1) of the Internal Revenue Code of 1986, which currently provides for a business income tax credit for certain of such facilities. A direct air capture facility for this purpose is a facility that captures carbon dioxide from the ambient air—not including capturing carbon dioxide deliberately released from subsurface springs and not including facilities that use natural photosynthesis to capture carbon dioxide. To the extent that a facility receives tax-exempt financing for a portion of the eligible costs and is also eligible for the Section 45Q tax credit, the eligible tax credit will be reduced by the proportional amount of tax-exempt financing, but with a cap of a 50% reduction.

Exempt facility bonds for qualified carbon dioxide capture facilities are subject to a 75% exemption from volume cap, such that only 25% of the volume cap amount is required.

Qualified Highway and Surface Freight National Volume Cap Increase. Existing law allowed the issuance of exempt facility bonds for certain transportation projects that receive federal funding, but only with an allocation of volume cap from the Secretary of Transportation. These types of exempt facility bonds were often used for P3 transportation projects, as these bonds are not subject to the private business use or other private activity limitations. The national volume cap limit for these bonds was set at $15 billion in 2005, and as of November 2021, approximately $13.8 billion had been used, and another $934 million has been allocated to projects but not yet issued. The Act increases the national volume cap limitation to $30 billion, providing a significant increase for potential financing of additional P3 transportation projects.

New and Notable Infrastructure Programs

The Act provides an enormous amount of funding for a broad range of infrastructure projects. Below is a summary of particular provisions, focused by sector, that may be of interest to state and local governments, tribal governments, and other participants in particular infrastructure sectors. This is not comprehensive, but focuses on some of the larger programs that relate to capital infrastructure projects. Numerous other provisions of the Act may be of interest to particular participants in the municipal finance industry, including grant funding for cybersecurity initiatives, brownfield development, energy efficiency assessments, and job training and technical assistance related to climate resilience or infrastructure projects.

Airports. The Act provides $15 billion over the next five years in formula-based grants to airports for the Airport Improvement Program, which generally allows flexibility in funding improvements to runways, taxiways, terminals and other projects. There is also $5 billion available in the Airport Terminal Program for discretionary grants for terminal improvements and other landside projects.

The Act also makes airport-related projects eligible for loans and other credit support pursuant to the Transportation Infrastructure Finance and Innovation Act ("TIFIA"). TIFIA loans have been used as a source of low-interest, long-term funding for various highway and surface transportation projects. In addition to expanding the eligibility to include airport-related projects, the Act further extends the repayment terms on TIFIA loans for up to 75 years for certain infrastructure projects.

Broadband Projects. The Act authorizes a total of $65 billion in funding for broadband infrastructure. This includes $42.45 billion in grant programs for states, territories, and the District of Columbia to develop broadband projects, as well as $2 billion in grant and loan programs to provide broadband service in rural areas. The Act also provides $2.75 billion in new grant programs to promote digital inclusion and equity. An additional $1 billion is available for grants to various entities, including electrical utilities and cooperatives, for "middle mile" infrastructure to expand broadband to unserved areas.

Energy Infrastructure. The Act includes $65 billion for a range of energy infrastructure programs, including $5 billion for a new grant program to make electrical grids more resilient to weather, wildfire and natural disasters, $5 billion for federal assistance for innovative approaches to making transmission, storage, and distribution infrastructure more resilient (plus another $1 billion for remote or rural areas), and $3 billion for a matching grant program for smart grid investments.

The Act creates a $2.5 billion revolving loan fund program for new or upgraded transmission lines, and allows the Department of Energy to acquire a portion of the capacity of the line in order to serve as an "anchor-tenant" for the line to promote economic viability. The Act also authorizes more than $500 million in incentive payments to owners of hydroelectric facilities for capital improvements that improve grid resiliency, improve dam safety, or are environmental improvements.

Ports, Waterways and Ferries. The Act expands the scope of eligible projects for the Department of Transportation's Port Infrastructure Development Program, and provides $2.25 billion over the next five years in funding for competitive grants pursuant to that program. In addition to the types of projects previously authorized, the Act authorizes projects that improve resilience to climate change or reduce greenhouse gas emissions at ports, such as electrification, vehicle charging infrastructure, and equipment replacements or retrofits. The Act also provides additional funding for grants pursuant to the Marine Highways Program, and for grants to reduce truck emissions at ports.

The Act provides $1.25 billion in grants for passenger ferries, and establishes a $1 billion program for ferry service in rural areas, which also allows use of these funds for operating costs.

Public Schools. Although not often thought of as an infrastructure sector, the Act provides $500 million in competitive grants to public schools for energy efficiency improvements, renewable energy, or alternative fuel infrastructure for vehicles. The Act also provides $5 billion in funding for the replacement of school buses with zero emission or alternative fuel buses, and $200 million in funding for grants to address lead contamination in school drinking water.

Public Transit and Rail. Numerous provisions of the Act provide funding for public transit and rail projects, including $8 billion in grants for new and expanded bus and rail service, $4.75 billion in grants for maintenance, replacement and rehabilitation of buses and rail assets, $5.25 billion in grants for low- and no-emission buses, including supporting facilities and workforce training, and $2 billion in certain grant programs to help make public transit systems more accessible to seniors and persons with disabilities. The Act also includes several programs addressing maintenance backlogs for passenger and freight rail, as well as capital projects that improve intercity passenger rail.

The Act also expands eligibility for TIFIA loans to (i) public infrastructure projects located within walking distance of, and accessible to certain public transit facilities, (ii) economic development projects that incorporate private investment and are physically or functionally related to passenger rail.

Roads and Bridges. The largest area of new spending in the Act is directed towards highways, roads, and bridges. In addition to reauthorizing existing highway programs, the Act provides more than $36 billion in competitive and formula grants for bridge repairs and replacement, as well as $7.5 billion in grants for surface transportation projects of local and/or regional significance, $5 billion for multi-modal, multi-jurisdictional projects of national or regional significance, and a $3.2 billion increase in grant funding for highway and rail projects of national and regional significance. The Act also provides funding for certain specific highway transportation projects, creates a grant program for both formula and competitive grants for transportation resiliency projects, and another grant program for replacing culverts under roads, bridges, railroad tracks, and trails.

Tribal Governments. Indian tribes are eligible recipients for many of the new programs in the Act that are otherwise described in this summary, such as the grants for vehicle charging and alternative fuel infrastructure and grants for electric grid resiliency projects. The Act also expands the eligibility for certain existing programs to include Indian tribes, such as for grants for certain rail projects, and sets aside funds for tribes, such as a 5% set aside in rural public transportation formula grants for public transportation projects on Indian reservations.

Vehicle Charging and Alternative Fuel Infrastructure. This is not exclusive to a particular infrastructure sector, but instead a particular category of projects that affects multiple sectors. The Act provides $7.5 billion in grants to states, local governments, tribes, and territories for publicly accessible electric vehicle charging infrastructure, as well as infrastructure for hydrogen, propane, or natural gas fueled vehicles. The goal of these grants is to create alternative fuel corridors, which can either be corridors designated by the Department of Transportation, or by a state or group of states in certain cases. These grants will be prioritized for rural areas, low and moderate income neighborhoods, and areas with low amounts of private parking or with high-density housing. These funds will be available for up to 80% of the costs of projects, with a maximum grant amount of $15 million, and in order to require private participation, the grants are to be used to contract with a private entity for acquisition and installation of the infrastructure, and the private entity must agree to pay the portion of the project costs not funded with federal grants.

In addition to that particular grant program, there are multiple other provisions in the Act providing funding for electric vehicle or alternative fuel infrastructure, either by expanding the eligibility of such infrastructure for funding from existing programs (e.g., the Surface Transportation Block Grant Program), or as part of new programs targeted at particular sectors as discussed elsewhere in this summary (e.g., schools and ports).

Water and Wastewater. The Act provides $55 billion in new funding for water and wastewater projects, primarily through programs pursuant to the existing Drinking Water and Clean Water State Revolving Loan Funds ("SRFs"). $15 billion will be made available through the Drinking Water SRF for grants, loans, and forgivable loans for lead pipe replacement in service lines, without any state cost-share requirement. $10 billion is being made available through both SRF programs as grants to states and water/wastewater utilities to treat perfluoroalkyl or polyfluoroalkyl substances or other identified contaminants of emerging concern.

by John Stanley

December 27, 2021

Orrick, Herrington & Sutcliffe LLP

Cyber Threat Brief: A Log (4j) Has Been Added To The Fire

Key Takeaways

- The recently discovered vulnerability in the widely used software library Apache Log4j highlights the increasing risk that cyber events pose to credit.
- We think cyber governance will play a central role in determining the magnitude of the impact on entities from this security flaw over the coming weeks and months.
- Entities that are badly prepared, handle the event poorly, have weaker balance sheets, and lack adequate cyber insurance or other means to address the potential financial impact will be most exposed.

Continue reading. [Free registration required.]

17 Dec, 2021

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9 Big Public Finance Surprises in 2021.

This year taught us to humbly expect the unexpected, from hundreds of billions in federal "helicopter money" to $35,000 bonuses to lure back retired transit workers. And how is your public pension fund doing on something called ESG?

Americans entered this year with hopes that COVID-19 would be vanquished and life would return to normal, but that didn't happen. Plenty of unexpected things did happen, as they always do of course, and much of it was felt by government, from insurrectionists storming the U.S. Capitol in January to some surprise upsets (and near-upsets) in last month's state and local elections. The world of public finance experienced its own twists and turns: Congress finally funded infrastructure, for example, but then stalled on tax provisions favorable to municipalities. Here's where the year brought results that few had predicted:

1. Budget surpluses. Economists almost universally expected that states and local governments would suffer revenue shortfalls as a result of the pandemic. Congress approved megabillion-dollar aid packages to bail them out from a pandemic recession that nobody had ever experienced. But a "fiscal trifecta" materialized: The federal helicopter money sent directly to households provided billions for spending that supported sales taxes. The stock market surged, which brought record income-tax receipts from investors' capital gains. And real estate prices zoomed, boosting property tax rolls. Most states ended fiscal 2021 with a budget surplus, not a deficit. One exception: Petroleum-producing states saw lower extraction revenues until oil prices rebounded late in the year.

2. A property tax bonanza. There is much ado in professional circles these days about "reimagining local government revenues." Some of the targets for reform are fines and fees, which tend to burden lower-income residents disproportionately, and sales taxes are deemed regressive as well. But the big money driver across the municipal sector is in the property tax, which is also disliked by advocates of progressive taxation. Nevertheless, whether reformers like it or not, the stability and reliability of the property tax is now buttressed by surging home prices, which make it an unheralded growth engine in the local government revenue base. Although there will be some jurisdictions that now face property tax backlash if they don't cut tax rates to compensate for surging parcel assessments, reform advocates will face an uphill battle if they seek to displace reliance on today's power train in municipal budgets.

3. The return of inflation. Despite midyear assurances from federal officials and central bankers that inflation would be transitory, rising costs have persisted and worsened. November's consumer price index (CPI) readout of 6.8 percent was the highest in 39 years. Government purchasing departments have strained all year to outwit the pressures of sticker shock: The costs of everything from police cars to highway de-icing supplies went up and stayed up. A surging CPI also triggers higher salaries and pension costs. Even when supply chain snags are worked out, the costs of housing and rents continue skyward, and that will keep pressuring the inflation indexes in coming months because of lag effects in those data series. November's producer prices jumped 9 percent over last year, which will likewise pressure consumer prices early in 2022. Right now, inflation looks to be the top issue and biggest unknown in state and local finance next year.

4. Resignation nation. Pundits predicted that the workforce would change forever with remote work and hybrid office/home employment patterns becoming more prevalent, but nobody expected to see the level of job-jumping and "time out" workforce departures that are now driving human resources departments and municipal managers batty. Although some public services professions continue to draw new recruits, and have been more stable than the fickle hospitality industry workforce, the ground has shifted. Governments are no longer employers of last resort as the unemployment rate shrinks. Employee retention has become a nationwide challenge, and government employers are hardly immune. Inducements like child care and flexible work schedules must be accompanied by top-down efforts to make public agencies a happier place to work, because that is what more employees are demanding. Psychic income from public service alone is not a sufficient motivator anymore, unless it's backed up by team engagement — and higher pay. New York has been paying $35,000 rehiring bonuses for retired transit workers who fill vacancies, and the Big Apple is not alone. Some public employers are even using federal COVID-19 aid, directly or indirectly, to pay bonuses.

5. Labor in the catbird seat. With inflation and tight employment markets now the prevailing environment for labor negotiations, public-sector unions have more clout than they have seen since before the Great Recession. On the fiscal side, budgeters must now expect to see contract demands for "CPI plus X percent" and catch-up salary increases to compensate for a decade of frugality. As services-sector employers, state and local governments will now face mounting cost pressures. With all that (nonrecurring) federal fiscal assistance sloshing and swishing around, some of it will be expected to take the form of permanent wage increases. Next year looks to be a contentious one for public-sector labor negotiators and their budgeting sidekicks who run the numbers. Expect more compensation dispute arbitration in jurisdictions where rocks hit hard places.

6. The muni bond market that Dems left at the altar. Almost everybody in the public finance community who works in Washington, D.C., had high hopes that Congress' tortured budget reconciliation bill would ultimately include goodies for the municipal bond market. Build America Bonds revival, advance refunding and enhanced bank eligibility for muni investments were all included in earlier drafts in the House, but they got scuttled when Senate centrists took the upper hand and sliced the size of the package, which in turn forced the tax committees to cut them out as revenue-losers. Like Detroit Lions and Seattle Mariners fans, it now looks like we'll just have to wait for next year unless Christmas magic arrives on the Senate floor in coming days. In retrospect, the sad and inexplicable surprise here was that these low-cost muni bond market incentives were not embedded in the bipartisan infrastructure bill, to leverage and optimize federal outlays.

7. Jerry-rigged SALT relief. Rather than wait for Congress, 20 states crafted workaround schemes for business owners to get credits for their state and local taxes at the state level. However, such Rube Goldberg schemes don't help working middle-class households. Congressional SALT relief remains in "placeholder" status. Until and unless President Biden's Build Back Better taxing-an--spending package clears the Senate, we won't know for sure which, if any, federal taxpayers will see higher SALT deduction caps, and who gets left with coal in their stockings. (At this writing the SALT elves were still nagging Santa, but Beltway insiders now doubt a breakthrough this month.)

8. Pensions: big wins for ESG. Public pension plan trustees and advocacy groups had been increasingly focused on environmental, social and governance (ESG) considerations in their investment policies, but 2021 overshot most proponents' expectations. European leaders, shareholders and courts successfully pressured Big Oil companies like Shell to migrate to a lower-carbon business model, and American activists won board seats at Exxon. Even the New York Stock Exchange now has a high-priority ESG initiative. As the tide turned, U.S. portfolio managers quickly gussied up their profiles and marketing pitches: ESG has become a hot strategy for mutual fund and pension managers as younger investors increasingly demand that their investments align with their values. Proof of the pudding is that "zero-carbon offsets" are now trading on global financial exchanges and Big Money is buying them at scale. Expect to see ESG become a recurring agenda topic in pension-land as ESG mutual funds now quickly creep into 457, 403(b) and 401(a) retirement plan menus as the products du jour.

9. And a leveraged CalPERS. It's still just top of their first inning in this new game, but a summary of surprises in 2021 cannot overlook the recent decision by the nation's largest public pension fund to leverage its assets by borrowing about $25 billion for investments aimed at increasing the portfolio's returns. Critics say the California Public Employees' Retirement System's 6.8 percent target for compounding annual investment returns with this leveraging initiative is wishful and that trustees would rather play with fire than raise contribution rates. Although supporters claim it's "diversification," others would say this strategy is even more risky than issuing pension funding bonds. Would you take out a home equity loan to fund your IRA, in a year when stocks gained 20 percent and now trade near peak levels with lofty valuations? Or is this really just a savvy CalPERS shortcut to bigger positions in high-yielding asset categories like private lending as interest rates increase? Time will tell.

governing.com

Dec. 21, 2021 • Girard Miller

What the Stalled Infrastructure Bill Means for Munis.

In this edition of "Muni Moment," Fitch Ratings Senior Director Eric Kim discusses what the stalled infrastructure legislation could mean for the municipal bond market. He speaks with Bloomberg's Taylor Riggs on "Bloomberg Markets: The Close."

Watch video.

Bloomberg Markets: The Close

December 22nd, 2021, 12:18 PM PST

Congress Provides Substantial Funding for Variety of Water Projects in Infrastructure Law With Emphasis on Low Income Communities.

The Infrastructure Investment and Jobs Act (IIJA) contains significant water-related provisions, amounting to $82.5 billion in spending.[1] Areas addressed by these provisions include drinking water safety, clean water more generally, access to water, and research.

Background

America faces many serious problems involving water. People in rural areas remain dependent on often unreliable wells, and the water infrastructure of many U.S. cities has deteriorated as many existing pipes remain contaminated by lead. Meanwhile, from 1996 to 2018, the cost of water and wastewater has increased at annual rates of 5.09% and 5.64%, respectively, compared to an annual increase in the Consumer Price Index of only 2.1%.[2]

In Flint, Michigan, the city's drinking water was contaminated with lead in 2014, beginning a crisis that lasted until at least 2019. Between 6,000 and 12,000 children were exposed to high levels of lead.[3] The Flint disaster provides examples of many of the problems the water provisions of the IIJA seek to confront: environmental injustice, the continued use of lead service pipes, and failures of local, state, and federal governments.

Threats to clean drinking water go beyond lead, however, and in many ways, regulation has failed to keep up with new risks. For example, the Environmental Protection Agency has not issued National Primary Drinking Water Regulations for new contaminants since 1996, although it announced its final determination to regulate perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) in March 2021.[4] PFOS, PFOA, and other per- and polyfluoroalkyl substances (PFAS) have contaminated water supplies in many places across the country, and because they remain in the environment for a long time and do not easily degrade, pose particular problems to remediate.

These water-related problems were part of a broader set of infrastructure-related problems the IIJA sought to address. The law grew out of the $2.3 trillion American Jobs Plan announced by President Biden on March 31, 2021, amounting to $4 trillion in combination with the American Families Plan announced in April.[5] The plans' "human infrastructure" provisions were split off into the still-unpassed Build Back Better Act to seek bipartisan support for the IIJA, and the IIJA itself was cut considerably. The final version of the IIJA authorizes a total of $1.2 trillion in spending over several years. The bill finally became law on November 15, 2021.

Safe Drinking Water

The largest category of water-related investments in the Act involves improvements in drinking water safety and sanitation, including around $24 billion in grants to states over five years under the existing Safe Drinking Water Act and Federal Water Pollution Control Act. The Infrastructure Investment and Jobs Act also provides $15 billion for projects to replace lead water pipes and service lines, and $9 billion for addressing PFAS and other "emerging contaminants."[6] Section 50101's amendments to the Safe Drinking Water Act, in addition to authorizing new spending, clarify that SDWA grants "to assist in responding to and alleviating any emergency situation" can include responses to cybersecurity events and heightened lead exposure. (Section 50113 also concerns cybersecurity support for public water systems.) These amendments also provide that "State-based nonprofit organizations that are governed by community water systems" are eligible for technical assistance under Section 1442(e).

Section 50102 reauthorizes the Safe Drinking Water Act's Drinking Water State Revolving Loan Funds and appropriations for their capitalization grants. It also amends SDWA Section 1452(d) to give states more ways of subsidizing projects serving disadvantaged communities: "grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt."

Section 50103 authorizes appropriations for the SDWA's source water quality protection partnership petition program and allows counties to form such partnerships on behalf of unincorporated areas.

Section 50104 expands the projects eligible for grants to small and disadvantaged communities under the Safe Drinking Water Act to include "the purchase of point-of-entry or point-of-use filters and filtration systems that are certified by a third party using science-based test methods for the removal of contaminants of concern." (This is the only reference to point-of-use systems in the IIJA.) It also requires the EPA to "establish a competitive grant program" through which eligible entities would "assist eligible individuals in covering the costs incurred by the eligible individual in connecting the household of the eligible individual to a public water system."

Section 50105 includes several measures to reduce lead in drinking water. It increases and extends appropriations for lead reduction grants, and allows them to be used to replace privately-owned lead service lines, "with priority for disadvantaged communities based on the affordability criteria established by the applicable State under [SDWA] section 1452(d)(3), low-income homeowners, and landlords or property owners providing housing to low-income renters." It also requires water systems to replace privately-owned lead service lines without cost to low-income customers, and to notify state governments of planned lead service line replacements.

Section 50110 requires the EPA to "establish a voluntary school and child care program lead testing, compliance monitoring, and lead reduction grant program" and to publish school lead testing guidance for public water systems. It also reauthorizes appropriations for SDWA Section 1464(d)'s existing Voluntary School and Child Care Program Lead Testing Grant Program.

Another grant program, for state responses to contaminants, authorized by SDWA section 1459A(j), is expanded by IIJA section 50114 beyond its previous definition of "underserved communities" to include, for example, communities "with a population of less than 10,000 individuals that the Administrator determines does not have the capacity to incur debt sufficient to finance a project or activity."[7]

Water Systems

Section 50106 requires the EPA to establish a grant program for "Operational Sustainability of Small

Public Water Systems," while section 50107 requires it to establish a "Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability Program." Section 50109 requires the EPA to establish another grant program "to assist qualifying households with need in maintaining access to drinking water and wastewater treatment," based on the results on a study required by Section 50108. The Indian Reservation Drinking Water Grant Program will be expanded under section 50111 to include wastewater system improvements as well as drinking water system improvements.

Research

The law funds water-related research by several entities – both scientific research into new technologies and studies of social problems. Section 50201 provides $75 million annually through fiscal year 2026 for research, investigations, training, and information grants, including to state water pollution control agencies and nonprofit organizations. Section 50222 revises the Federal Water Pollution Control Act to provide "funding to carry out groundwater research on enhanced aquifer use and recharge in support of sole-source aquifers" to state, local, and tribal governments jointly with research institutions. Section 50115 requires the EPA to conduct annual studies on the prevalence of boil water advisories, while section 50112 requires it to report on advanced drinking-water-related technologies. Section 50108 requires it to conduct a "Needs assessment for nationwide rural and urban low-income community water assistance," while 50216 requires it to "identify historical distributions of funds to small and disadvantaged communities and new opportunities and methods to improve on the distribution of funds under" the Clean Water State Revolving Funds and Drinking Water State Revolving Funds.

Section 50213 requires the EPA to establish a competitive grant pilot program for the sharing of water data. The EPA is directed by section 50217 to establish "centers of excellence for stormwater control infrastructure technologies" at universities, other research institutions, and nonprofit organizations (as well as grants to state, local, and tribal governments for stormwater infrastructure projects involving new technologies). Under section 50218, the EPA must establish a Water Reuse Interagency Working Group "to develop and coordinate actions, tools, and resources to advance water reuse across the United States, including through the implementation of the February 2020 National Water Reuse Action Plan."

Sections 50219 and 50220 require studies by the EPA of advanced clean water technologies and capital improvement needs for Clean Water State Revolving Fund-eligible projects, respectively. Section 50221 funds the Water Resource Research Act's Water Resource Research Institutes but puts tighter controls on the funding, such as Department of the Interior evaluations of each Institute every five years. Finally, section 50222 directs the EPA to "provide funding to carry out groundwater research on enhanced aquifer use and recharge in support of sole-source aquifers."

Clean Water

Beyond drinking water provisions, other provisions of the IIJA concern wastewater and other clean water issues. Section 50202 establishes the Wastewater Efficiency Grant Pilot Program for publicly-owned treatment works, while Section 50203 funds the Clean Water Act's Pilot Program for Alternative Water Source Projects and makes stormwater projects eligible for it. Similarly, section 50204 funds Sewer Overflow and Stormwater Reuse Municipal Grants and expands their scope to include "notification systems to inform the public of combined sewer or sanitary overflows that result in sewage being released into rivers and other waters." Sections 50205 through 50209 create new grant programs: the Clean Water Infrastructure Resiliency and Sustainability Program; the Small and Medium Publicly Owned Treatment Works Circuit Rider Program; the Small Publicly Owned Treatment Works Efficiency Grant Program; Grants for Construction and Refurbishing of

Individual Household Decentralized Wastewater Systems for Individuals with Low or Moderate Income; and, finally, a program of grants to publicly-owned water treatment works (POTWs) and nonprofit entities, to cover the cost of connecting low-income individuals to POTWs.

The next few sections revise and fund existing programs. Section 50210 funds the Clean Water State Revolving Funds at a rate of $2.40 billion for FY2020, $2.75 billion for FY2023, $3.00 billion for FY2024, and $3.25 billion for each of FY2025 and FY2026. Section 50211 funds the Innovative Water Infrastructure Workforce Development program and expands the use of grants under the program. Section 50212 funds grants to Alaska to improve sanitation in rural and native villages. Section 50215 reauthorizes Water Infrastructure Finance and Innovation Act (WIFIA) funding, while section 50214 requires WIFIA loan applicants to submit only one final rating option letter instead of two.

Water Rights

Section 70101 establishes the $2.5 billion Indian Water Rights Settlement Completion Fund to pay for "obligations identified by the Secretary of the Interior, under an Indian water settlement approved and authorized by an Act of Congress before the date of enactment of this Act."

Conclusion

The IIJA greatly expands funding for, and revises rules regarding, such areas as lead pipe replacement, filtration systems, and general water and sewer infrastructure. It remains to be seen whether even this additional spending is sufficient for the nation's water problems.

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[1] https://pacinst.org/wp-content/uploads/2021/11/US_Infrastructure_Brief.pdf.

[2] https://www.awwa.org/AWWA-Articles/awwas-2019-water-and-wastewater-rate-survey-reveals-increasing-utility-costs-boosting-rates.

[3] https://web.archive.org/web/20160203004456/http://www.wnem.com/story/30995770/united-way-estimates-cost-of-helping-children-100m.

[4] 86 FR 12272.

[5] https://www.politico.com/news/2021/05/24/infrastructure-talks-near-collapse-490637.

[6] https://pacinst.org/wp-content/uploads/2021/11/US_Infrastructure_Brief.pdf.

[7] SDWA § 1459A(c)(2) (42 U.S.C. 300j-19a).

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December 27 2021

S&P U.S. Public Finance Rating Activity, November 2021

View the S&P Report.

21 Dec, 2021

[Recyclers Are Lining Up for the Municipal Market's Cash.]

- **Turning plastic into petrochemicals, sugarcane waste into fuel**
- **Debt for wood-chip-to-insulation plant sells at 8% in 2051**

In Washington state, municipal bonds are financing a project to convert plastic waste into petrochemical ingredients. In Louisiana, municipal debt is paying for a biorefinery to turn sugarcane waste into fuel pellets and soil additives.

These are only two of what promises to be another robust calendar of borrowers in the recycling field in 2022, assuming this next stage of the pandemic doesn't completely quash investors' risk appetite. I base that expectation on several things: the apparent momentum behind such projects nationwide; the pace of deals I've observed this year, with at least three this month alone; and the unrelenting appetite for speculative offerings with long-term yields still historically low.

This is the high-risk, high-reward part of the municipal market. As we've seen time and again, it's hard to take one thing and turn it into something else, which is why $1 billion in recycler bonds are in the Bloomberg Default/Distress Report.

We only got a glimpse into the plans of these latest entrants — from Washington and Louisiana — because they each sold bonds whose proceeds will be held in escrow and invested in securities backed by the U.S. government. The newly sold debt earned top ratings, with the companies planning a mandatory tender and remarketing in 2022. Companies typically do this to avoid losing their allocation of private activity bonds.

Offering documents gave no indication of a likely rating for the next round of borrowing. But the typical recycling deal is most often unrated or speculative grade.

Coming Attractions

Prospective buyers for these two issues got preliminary limited offering memoranda that were more like coming attractions.

The Washington Economic Development Finance Authority sold $50.8 million in environmental facilities revenue bonds for the Mura Cascade ELP LLC project in late November. The project aims to convert 130,000 tons of plastic waste into about 100,000 tons of petrochemical ingredients.

The accompanying document was 56 pages, with an appendix on the company that was only five pages, but was promising: "Mura is seeking to change the way that society views end-of-life plastics, in that it should be looked at as a valuable resource and not as a waste product."

And this: "It is Mura's ambition to be the largest producer of renewable petrochemicals globally with a production capacity of one million tons per annum by 2025."

Last week, the Louisiana Local Government Environmental Facilities and Community Development Authority sold $60 million in revenue bonds for the American Biocarbon CT, LLC project, to be located at the Cora Texas Sugar Mill in White Castle, Louisiana.

The preliminary official statement is a mere 80 pages, the description of the project a few sentences.

This included the statement that the company already operates a "demonstration scale plant with similar equipment configuration, but less product quantities. This demonstration scale plant is capable of producing approximately 10,000 tons per year of pellets and up to 5,000 tons per year of biochar, consuming 30,000 tons per year of bagasse when at full operation."

Sugarcane Waste

This is at least the second plant contemplated or under construction to recycle bagasse, which is what they call sugarcane waste. In 2019, I wrote about Southeast Renewable Fuels LLC, which wanted to sell $190 million in bonds to finance a mill to turn bagasse into pulp. The company's website says it has obtained approval from the state of Florida to sell industrial revenue bonds, but it doesn't seem to have done so yet, so we may see two bagasse recyclers financed in the muni market in 2022.

A previous bagasse recycler came to grief. Back in the early 1990s, Flo-Sun Inc., one of Florida's largest sugar companies, borrowed almost $300 million to build two power plants to burn bagasse and, after sugarcane-grinding season, wood. This was to produce steam and electricity.

The plants eventually went bust and the debt defaulted. But the recycling sector's unpromising history hasn't deterred new entrants, and buyers continue to line up if the price is right.

Just last week the Finance Authority of Maine sold $85 million in unrated bonds for a company that wants to recycle wood chips into insulation material. The bonds, sold in minimum denominations of $100,000, were priced at par to yield 8% to their 2051 maturity, or 651 basis points over the benchmark.

Bloomberg Markets

By Joseph Mysak Jr

December 21, 2021, 10:16 AM PST

— With assistance by Marisa Gertz

Muni Housing Bonds Set to Outperform in 2022 Amid Rising Rates, Analyst Says.

- Municipal housing bonds will perform better than other muni sectors next year as interest rates are set to rise amid the Federal Reserve's tapering of its asset purchases, JPMorgan Head of Municipal Research and Strategy Peter DeGroot told Bloomberg.
- Keep in mind the 10-year U.S. Treasury yield is up more than 50% on a Y/Y basis, now changing hands at sub 1.48%.
- Meanwhile, the iShares Trust National Muni exchange-traded fund (NYSEARCA:MUB) is off nearly 1% in the past year.
- DeGroot highlights that debt issued by states to finance low-interest loans for first-time homebuyers or develop affordable housing carry higher yields and are less volatile.
- "Housing bonds have performed extraordinarily well in rising rate environments," DeGroot told Bloomberg.
- Specifically, planned amortization class bonds, which is a way to protect investors from prepayment risk, are the best candidates to outperform, DeGroot added.

- Towards the end of November, muni bonds were about to snap a three-month losing streak.

Seeking Alpha

Dec. 27, 2021

How Waterfront States and Cities are Harnessing Their Blue Economies.

Communities are becoming strategic about planning the use of their shorelines rather than relying solely on tourism and recreation to generate water-related revenue.

A growing handful of coastal states, cities and counties are focusing their economic development efforts on industries that rely on the ocean.

Participants in the so-called "blue economy," shoreside communities contributed $385 billion to the gross domestic product in 2019 and supported 3 million jobs in more than 20 marine industries, including fishing, tourism, off-shore oil drilling and boat building, according to the Center for the Blue Economy in Monterey, California.

Although 30 states and 1,000 counties abut an ocean or another major body of water, some states, including Massachusetts, Rhode Island, Washington and Alaska, along with coastal cities like Gulfport, Mississippi and San Diego, have, over the past few years, become strategic about planning the use of their shorelines rather than relying solely on tourism and recreation to generate water-related revenue.

Continue reading.

Route Fifty

By Sharon O'Malley

DEC 24, 2021

Fitch: Media Contracts Limit Impact of Postponed Games on Sports Ratings

Fitch Ratings-Chicago/New York-22 December 2021: National media contracts will limit the near-term ratings impact on sports leagues of the recent postponement of North American professional sports games following the sharp uptick in Covid-19 infections caused by the delta and omicron variants among players, says Fitch Ratings. The credit profiles of sports facilities with a high proportion of attendance-driven revenues could be more impacted by the postponement of games in the near term, compared with facilities with a high mix of contractual revenue such as that associated with premium seating and sponsorships, whose credit profiles are expected to be more stable.

The NBA, NHL and NFL have all observed a sudden increase in positive coronavirus tests afflicting players since mid-December. This has led, in some cases, to roster shortages and teams' inability to compete. Earlier this week, the NHL and NHL Players' Association announced that five additional games will be postponed this week, bringing the total number of games postponed this season to 50.

Meanwhile, the NBA postponed five games this week, resulting in a total of seven games postponed this season so far, and the NFL announced its first three schedule changes for the season last week.

League-level debt is secured by national media contracts, with payment in full linked to a league's ability to deliver a full schedule of games under the terms of the contracts. US sports leagues were able to reschedule a significant number of regular season games in 2020 and still hold playoffs, enabling most of them to realize the full value of their national media contracts.

Leagues are taking extraordinary measures to continue operations amid the recent outbreak of cases and retain the flexibility to reschedule games, including potentially extending the season beyond the normal timeframe. The return to a bubble format is viewed as unlikely at this stage, given the high costs associated with operating under such conditions. An entire suspension of the season is also viewed as unlikely, unless there is a continued surge in infections among players.

A material disruption to the flow of national media contract revenue that could negatively affect league ratings is viewed as unlikely at this time. However, if leagues are unable to complete the season in order to deliver the full value of these contracts to their media partners, broadcasters may look to receive credits for lost content in current or future years.

Future contractual broadcast revenues could also be reduced or spread across future years as a form of credit for lost value. In 2020, amid greater uncertainty around the successful completion of their seasons, the leagues' full delivery on national media contracts illustrated the ability of leagues to navigate through a challenging environment and mitigate the impact to credit profiles.

For facilities, rescheduled games, particularly to nonprime hours or "off-days," could have a negative impact on attendance and per-cap spending trends during the season. Government mandated capacity restrictions or the inability of marquee players to play due to league health and safety protocols could also adversely impact attendance and the cash flows that service facilities' debt.

Fitch is closely monitoring developments related to the coronavirus pandemic and its impact on professional sports. There are a wide range of potential outcomes on the length of the disruption, depending on the severity of this Covid-19 wave. Player salaries, the largest expense item for leagues, may have flexibility through existing collective bargaining agreements or future negotiations with player unions to adjust for changing revenues if leagues and franchises face further financial pressures

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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.

TAX - WISCONSIN

State ex rel. City of Waukesha v. City of Waukesha Board of Review

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

Taxable Municipal Supply Has Staying Power: 2022 Outlook

Summary

- We believe taxable muni supply could exceed $100 billion again in 2022 and total 25% of expected new issue supply.
- New money supply is expected to be higher, whereas debt used to "advance refund" tax-exempt munis by issuing taxable munis may decline slightly year over year.
- However, it appears that infrastructure legislation will be neutral for the muni market. The bill passed by the House of Representatives in November excludes municipal bond-friendly provisions. It's unlikely that Senate Democrats will include these provisions in their version of the bill.

Continue reading.

Seeking Alpha

Dec. 22, 2021

[What Does Fed's Recent Indication on Rate Hikes Mean for Fixed Income Markets?]

During the recently held Federal Open Market Committee (FOMC) meeting on December 15, the Federal Reserve Chair provided multiple indications toward taking some aggressive actions to address the historic high inflation in the United States that included reducing the Fed's bond purchases and the possibility of three interest rate hikes in 2022.

These actions come at a time when the prices of goods and services are rising at historic rates, primarily due to the relatively relaxed monetary policy, to combat the effects of the COVID-19 pandemic, along with supply chain imbalances, which have contributed to the elevated levels of inflation. In the recent FOMC meeting, the committee increased its inflation outlook for 2021 from 4.2% to 5.3% for all items. In addition to tapering its bond purchase program, the Fed chairman also indicated increasing the interest rate three times in 2022, which will be an aggressive yet warranted move to address economic forces.

In this article, we will take a closer look at the recent indications from the FOMC and how these decisions will likely impact the capital markets and, more importantly, fixed income portfolios.

Continue reading.

municipalbonds.com

by Jayden Sangha

Dec 22, 2021

2022 Is Gearing Up to Be a Record Year for Municipal Bonds.

2021 was already a strong year, and it's going to be another busy year in 2022 for municipal bonds with record issuance in the already $4 trillion dollar market.

According to a Bloomberg article, sales predictions based on data "collected from almost a dozen firms range from about $420 billion to $495 billion. A notable outlier is the projection from researchers at Bank of America, the market's largest underwriter, who expect a record year of sales totaling $550 billion."

Those projections come after the trillion-dollar infrastructure package was signed into law this year. The expectation is that local governments will issue a record number of bonds to help fund a wide swathe of infrastructure packages.

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

DECEMBER 27, 2021

ETFs Claim More of Muni Market.

Low costs lure bond investors, but using the funds to navigate market turmoil can be tricky

Municipal bond investors are piling into exchange-traded funds, attracted by low costs and the ability to trade quickly.

Muni ETFs held $80 billion as of the end of the third quarter, up from less than $50 billion two years ago, Federal Reserve data shows. Citigroup projects they will hold $125 billion by December 2022.

Investors this year spent record amounts of cash buying shares in all types of ETFs, baskets of securities that trade as easily as stocks and typically track indexes. They are drawn to muni ETFs for their easy access to tax-exempt yield at low cost under flexible trading conditions, especially with concerns about new taxes under a Democratic administration. ETF sponsors such as BlackRock Inc. report that muni ETFs have helped bring in client cash and fee revenue.

But trying to track prices in real time can be tricky in a market where about 50,000 state and local governments sell debt and some bonds go years without changing hands.

The proliferation of ETFs is part of a continuing shift in the nearly $4 trillion municipal market, where the typical investor once bought individual bonds and clipped coupons until maturity. For decades, retail investors have been moving to mutual funds, which they can trade once a day at the closing price.

ETFs allow investors to watch prices move in real time and trade whenever they want as often as they want, an appealing feature for work-from-home investors accustomed to watching meme-stock dramas in the corner of their screens.

“Newer investors tend to be more comfortable with the ETF structure,” said Steve Laipply, U.S. head of Bond ETFs at BlackRock Inc., which controls $36 billion in muni bond ETFs. “It’s this desire for transparency and nimbleness in trading.”

As a group, muni ETFs charge about a quarter of a percentage point less—as a share of assets—than open-ended muni bond mutual funds, according to a weighted average calculated by Morningstar Direct. For passive funds that track indexes, that difference is 0.03 percentage points. After-fee yields on investment-grade muni ETFs and mutual funds in 2021 through November were almost exactly the same.

Investment adviser Paul Winter of Five Seasons Financial Planning in Salt Lake City, Utah, keeps most of the roughly $3 million in municipal debt he manages in passive ETFs, after shifting his clients from mutual funds over the past decade. He said he appreciates not having to worry after making a trade that a late breaking headline will impact the share price.

“When you enter the order you know exactly what the price is going to be,” Mr. Winter said, adding that the speed helps him jump on bargains in equities or commodities.

Advisers aren’t the only fans. “There certainly has been a good adoption by the individual do-i--yourself-ers on our platform,” said Rich Powers, Head of ETF and Index Product Management at Vanguard Group.

But while muni ETFs trade like stocks, the underlying bonds don’t, a reality that can contribute to losses during market turmoil.

Since many munis trade infrequently, valuation services parse through trade data and estimate bond values. In normal times, ETF share prices and the estimated values of the underlying bonds move in lockstep in part because financial firms take advantage of any mismatch by buying up falling shares, exchanging them with the ETF sponsor for the underlying bonds and selling those bonds.

But during the March 2020 liquidity crisis triggered by the Covid-19 pandemic, many firms opted not sell the underlying bonds. That led to fewer data points available to help calculate the valuation, according to a study by the Municipal Securities Rulemaking Board, the muni bond industry's self-regulatory organization.

For more than a week, share prices of investment grade municipal bond ETFs run by BlackRock and Vanguard trailed the estimated value of the underlying bonds, according to Refinitiv data. At a VanEck ETF that tracks the even less liquid high-yield municipal market, the gap lasted more than two months.

"If you bought (during that period) I guess that's good," said MSRB Chief Economist Simon Wu. "If you sold l guess that's not good." In contrast, investors who bought or sold muni mutual fund shares during that time got a higher price based on valuation service estimates.

Mr. Powers said the episode showed ETFs could recover quickly even under intense strain. "Fixed-income ETFs stood up to the test," he said. Jim Colby, senior portfolio manager at Van Eck noted that the high-yield ETF has generally tracked the estimated value since last summer.

Still the episode helped convince Erin Hadary, a financial adviser with Denver-based Moneta Group, to guide clients interested in munis into mutual funds.

"I think bond ETFs for governments or investment grade corporate bonds are fine," Ms. Hadary said. "I worry in the municipal space if there is enough liquidity."

The Wall Street Journal

By Heather Gillers

Dec. 23, 2021 5:30 am ET

[Local Assessors Seek Federal Help to Make Property Taxes Fairer.]

Municipal officials want information from Fannie and Freddie's appraisal database.

A group of municipal property-valuation officials from across the U.S. has asked President Joe Biden's administration for help in tapping national data about the condition and quality of millions of homes to address widespread unfairness in local property taxes.

The effort follows a series of Bloomberg News reports this year about how residential property taxes, which raise roughly $500 billion a year nationwide, are plagued by systemic flaws: Official assessments tend to overstate the taxable value of inexpensive homes while understating the value of expensive ones. As a result, working-class homeowners pay higher effective property tax rates than the wealthy do.

In Chicago, the problem is most acute "in the bottom third of prices," said Cook County Assessor Fritz Kaegi. "And we think this is due to things that we are not measuring" with available data, he said: "quality and condition of homes."

Kaegi has suggested that the Uniform Appraisal Database maintained by the federally chartered mortgage buyers Fannie Mae and Freddie Mac might help plug the gap. The UAD contains information on the condition and quality of millions of U.S. homes that were appraised for mortgages. Kaegi recruited 15 other tax officials from major urban areas — including Seattle, Miami, Philadelphia and Dallas — to join him in asking for access to that information.

Federal officials haven't committed to granting the request; one primary concern centers on the need to filter out private information, such as names of owners and lenders, while preserving useful data on homes' quality. But the local officials' group is scheduled to meet with representatives of the Federal Housing Financial Agency in January to discuss the proposal.

Residential property taxes are generally based on the fair market value of a home, as determined by local officials. Most assessments are based on recent sales. Generally, assessors use sales data to estimate values for all the homes in a jurisdiction. That process, known as mass appraisal, relies on computer models that calculate the average value of individual attributes, such as square footage of living space and number of bathrooms, and applies them to each residence.

But local assessors are barred from entering homes without permission, so they have no real data on each one's relative quality, including individual improvements or maintenance issues that might affect value. It's generally accepted that affluent homeowners are less likely to put off repairs, making high-priced housing stock more uniform and therefore easier to value. Experts say assessed values at the low end of the scale tend to vary more, contributing to inflated values.

Kaegi, who took office in 2018, says the UAD can provide the information assessors currently lack. He argues that because Fannie and Freddie are under federal conservatorship, administration officials can release the data to local assessors.

A former portfolio manager and neophyte politician, Kaegi won office by promising to bring fairness and accuracy to a deeply regressive system in Chicago. One study showed that inaccurate assessments in the area had shifted more than $2.2 billion in taxes from the highest-priced homes to the lowest over five years' time. Now three years into his four-year term and seeking re-election, Kaegi has upgraded the agency's valuation models — the new ones use machine learning — and expanded the data sources used to value properties. He boosted transparency by posting detailed statistical reports on assessments online, with explanations of the agency's methods. But while his staff has narrowed disparities in the county's valuations, Kaegi says, gaps remain, especially among the least valuable properties.

Moreover, his efforts to correct valuations that were inaccurate and unfair for years have drawn opposition from business groups and some homeowners, illustrating the political difficulty of overhauling property tax systems.

Critics complain that Kaegi used sketchy data to justify a roughly 10% Covid reduction for residential assessments in early 2020, just as most office buildings and some small businesses saw dramatic increases as assessors addressed chronic inaccuracies. Then, during the pandemic, residential property values boomed while downtown office buildings and businesses reeled, and Cook County saw just the kind of unwarranted tax shift Kaegi had said he'd end. Opponents say he was currying favor with homeowners. Kaegi says he used the best data sources he had at the time, primarily unemployment figures and information about the impact of Covid on real estate investment trusts.

“It was the opposite of fair and accurate,” said Farzin Parang, executive director of the Building Owners and Managers Association of Chicago, an office building trade group, and staunch critic of Kaegi. “From our perspective, the entire thing was completely political.”

Now Kaegi’s trying to foster nationwide improvements.

Last March, after Bloomberg published a story that highlighted a new, nationwide study about widespread regressivity in property taxes, the University of Chicago professor who led the research met with White House staff members. Christopher Berry, a professor of public policy, walked the officials through his data analysis, which found unfair valuations in roughly nine out of every 10 U.S. counties it examined. Kaegi joined a follow-up meeting in April, where he pitched his request to use the UAD to gain insights about the condition and quality of homes.

In an interview, Berry said he thinks tapping the UAD is a good idea that would involve few costs for the federal government — but said it may lead to only marginal improvements. “That’s the only way this thing is going to get better, small continuous improvements,” he said.

Kaegi’s analysts have estimated that missing information about a home’s condition and quality could swing a valuation estimate up or down by tens of thousands of dollars. For homes at the lower end of the price scale — $100,000 or less in Chicago — that could result in highly unfair valuations.

In August, Kaegi and his 15 counterparts from across the country wrote to the White House for help in accessing the relevant UAD data. A senior administration official said a presidential task force that’s examining racial equity in home-loan appraisals is also committed to exploring property-tax fairness, though federal officials have little authority over local taxes.

Sharing appraisal data from the UAD would be a good start, said King County Assessor John Wilson in Seattle. “The information is well worthwhile,” he said. “It would help us on some of the questions we’ve all had about whether there are some things inherently discriminatory in our assessments.”

Bloomberg Business

By Jason Grotto

December 23, 2021

Jefferies Emerges as Winner as Texas Gun Law Rattles the Muni Market.

- **Firm leads Texas underwriting ranks since law took effect**
- **Standing since Sept. 1 compares with 12th place a year earlier**

Jefferies Financial Group is emerging as a clear winner of a faltering effort by Texas Republicans to punish Wall Street banks for their restrictive gun policies.

The lucrative Texas municipal-bond market, second only to California in terms of issuance, has been turned on its head since a law took effect Sept. 1 that bars state entities and local governments from working with firms if they “discriminate” against firearms companies.

With some of Wall Street’s largest banks having halted public-finance transactions in Texas because of the legislation, Jefferies is leading firms that have seen their business surge. It was the top municipal underwriter in the fast-growing state for the past four months, whereas in the same period last year it was 12th, data compiled by Bloomberg show.

Continue reading.

Bloomberg Markets

By Amanda Albright and Danielle Moran

December 22, 2021, 7:40 AM PST

Which Bank Will Dare to Finance Alabama's Prisons?

After Barclays dropped out, the state wants assurances that its next bond underwriter won't do the same. That leaves few options.

Alabama just won't give up on selling bonds to finance prison projects.

In April, Barclays Plc backed out as lead underwriter of a large municipal-bond deal for two Alabama prisons owned by CoreCivic Inc., a giant in the private-prison industry. It really had no excuse for the drama: The bank had previously pledged to no longer provide new financing to such companies and seemed to try to use the state's role as a workaround. Soon afterward, Stifel Financial Corp. said it was no longer involved. By September, the state's corrections department terminated its 30-year lease with CoreCivic, and lawmakers advanced a plan to use federal aid to build the new facilities.

The state and the Alabama Corrections Institution Finance Authority are still hoping to sell up to $785 million in bonds as well. The only snag: They need to find an underwriter that won't cave to potential pressure from activists. So Alabama is asking for unusual assurances from banks' senior management.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

December 22, 2021, 3:00 AM PST

California Community Economic Resilience Fund Update On Final Region Maps, Planning Guidelines Public Comment Period.

The Community Economic Resilience Fund (CERF) program continues to move forward, with three CERF updates recently released.

First, the final map of 13 regions that will receive up to $5 million planning grants under phase I of the program was published. This map is based on the public comment period that closed in mid-

November. Included along with the region map are FAQs that arose during the public comment process. To view the final 13 regions and FAQs, click here.

Continue reading.

CALIFORNIA FORWARD

by SARAH WALSH

DECEMBER 20, 2021

Orrick Webinar: Innovative Infrastructure Delivery under the Infrastructure & Investment Act - Replay Available

December.15.2021 | 12pm – 1pm (Eastern Standard Time)

Webinar – Recording Available

The bipartisan infrastructure legislation will provide $973 billion over the next five years, including $550 billion in new investments for all modes of transportation, water, power and energy and broadband.

Please join Orrick and the Bond Buyer as we discuss the legislation and how the Infrastructure & Investment Act (the "Act") will impact the municipal finance industry.

Topics to be covered include:

- How will the Act impact federal credit programs?
- How does the Act encourage innovative infrastructure delivery, including public-private partnerships and design-build?
- What should municipal clients be doing now to prepare for the Act's implementation?

Panelists:

- Matthew Neuringer, Senior Associate Orrick
- Helen Pennock, Senior Associate Orrick
- Chris Elmore, Vice President Goldman Sachs, Inc.
- Caitlin Devitt, The Bond Buyer

U.S. Supreme Court Has Ruled Ohio Billboard Tax is Unconstitutional.

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 23 2021

Ohio Department of Development Issues Brownfield Remediation and Building Demolition Funding Guidelines - Local Governments Need to Act Fast

View the Vorys brief.

Vorys Sater Seymour and Pease LLP

by Ryan D.Elliott, Christopher J. Knezevic and David M. Edelstein

December 22 2021

NFMA Municipal Analysts Bulletin - December 2021

Volume 31, No. 3 of the NFMA newsletter is available by clicking here. Also, please click here to read the special edition of the NFMA Municipal Analysts Bulletin, dated October 26, 2021. This special edition was published to provide NFMA members notification that the NFMA Board of Governors have approved a change to the NFMA mission statement, which represents an amendment to the NFMA Constitution. The proposed amendment is subject to a 60-day comment period by NFMA Regular Members.

RBC Paying $1M FINRA Settlement for Years of Junk Bond Oversight.

A brokerage firm accused of failing to track "junk bond" overconcentration in customer accounts for years has agreed to pay $1 million to settle with FINRA.

The regulator has sanctioned RBC Capital Markets, a New York-based broker-dealer with 2,400 registered representatives in its 275 branch offices, in a case involving potentially unsuitable concentration levels of high-yield bonds in customer accounts between July 2013 and June 2016.

During that period, RBC did not implement a supervisory system to comply with FINRA and Municipal Securities Rulemaking Board rules related to recommendations of high-yield corporate and municipal bonds, according to a letter of acceptance, waiver and consent from FINRA.

As a result, the firm failed to flag more than 100 customer accounts with conservative profiles for this kind of activity.

Additionally, FINRA officials said they have repeatedly reminded member firms of their sales practice obligations in connection with high-yield or “junk” bonds because of the increased risks. These bonds receive lower credit ratings, indicating a higher risk of default.

In settling the case without admitting or denying the charges, RBC agreed to a censure, $456,155 plus interest in restitution and a $550,000 fine. The case originated from a FINRA cycle examination of RBC.

According to the FINRA letter, RBC changed the tax coding of municipal bonds in its system in July 2013. This coding change inadvertently disabled alerts to identify potential concentration issues for further assessment.

RBC did not detect that the alerts were not working, in part, because the firm did not test its alerts during the relevant period, the FINRA letter alleges.

The defective alerts were discovered in September 2015, but the firm allegedly did not address the issue until July 2016. RBC is accused of failing to adopt alternate measures to identify potentially unsuitable concentrations in high-yield bonds and failing to tell supervisors that the alerts were not working as intended.

John Gebauer, president of the compliance firm National Regulatory Services, said this case highlights the importance of thoroughly testing written supervisory policies and procedures as part of the annual 3120 review.

“It appears that RBC thoughtfully designed a supervisory control system and implemented automated controls to ensure that the policies were followed,” Gebauer said. “However, when firms implement a technology-based solution, that does not eliminate the need to regularly test the systems to be certain that they are operating as intended. Whether by bug or changing requirements.

“This unquestioning deference to the results of technology is, unfortunately, an increasingly common occurrence.”

In a number of the impacted accounts, the holdings in high-yield bonds were more than six times the thresholds set by the firm, according to the FINRA letter.

“For example, Customer M, who was over 100 years old, was a trustee for two trust accounts, both of which had the most conservative investment objectives. By June 2015, 86% of one trust account and 100% of the second trust account consisted of high-yield municipal bonds,” said the FINRA letter.

The regulator then described another customer who was more than 70 years old and had a joint account with a conservative investment objective that, at times, consisted of as much as 92% in high-yield bonds.

Financial Planning has reached out to RBC Capital Markets for comment.

Financial Planning

By Justin L. Mack

December 21, 2021

Municipal Bond ETFs Are Turning Heads.

Fixed income investors are jumping into municipal bond exchange traded funds to capitalize on the nifty investment tool's easy use and low costs.

Muni ETFs held $80 billion in assets under management as of the end of the third quarter, compared to some $50 billion two years ago, the Wall Street Journal reports. Looking ahead, Citigroup predicts that muni ETFs will accumulate $125 billion by December of 2022.

Investors have funneled record amounts of cash into all types of ETFs in 2021. Many have been drawn to muni ETFs for their easy access to broad swaths of tax-exempt yield at low costs under flexible trading conditions throughout the day, similar to regular stocks. Many have also favored the tax-exempt status of the fixed income category, especially with concerns over potential new tax laws.

The proliferation of ETFs has helped contribute to the ongoing shift in the nearly $4 trillion municipal market. For decades, retail investors have been shifting to mutual funds, which trade once per day at the closing price, to access a broad, diverse portfolio of municipal bonds exposure. On the other hand, ETFs trade in real time through normal trading hours, which has generally been more appealing to investors who have been stuck at home during the pandemic.

"Newer investors tend to be more comfortable with the ETF structure," Steve Laipply, U.S. head of bond ETFs at BlackRock Inc., which controls $36 billion in muni bond ETFs, told the WSJ. "It's this desire for transparency and nimbleness in trading."

Furthermore, the ETF structure is taking a bigger slice from the traditional mutual fund space due to cheaper costs. Muni ETFs charge about a quarter of a percentage point less as a share of assets than their open-ended muni bond mutual funds counterparts, according to Morningstar Direct data. Among passive funds that try to reflect a benchmark index, the difference is 0.03%.

ETF investors who are interested in the munis space can also consider targeted ETF strategies, such as the popular iShares National Muni Bond ETF (NYSEArca: MUB), the Vanguard Tax-Exempt Bond ETF (NYSEArca: VTEB), and the SPDR Nuveen Bloomberg Municipal Bond ETF (NYSEArca: TFI).

ETF TRENDS

by MAX CHEN

DECEMBER 23, 202

Investors Flock To Muni Bond ETFs On Fundamentals

Morningstar gives Vanguard Tax-Exempt Bond ETF, the second biggest muni ETF, a gold rating, the research firm's highest.

Money is pouring into municipal bond exchange-traded funds, as the improved financial condition of municipalities, sparked by monetary and fiscal stimulus, has investors enthusiastic.

Muni ETF assets totaled $80 billion as of Sept. 30, up from less than $50 billion two years ago, according to Federal Reserve. Citigroup forecasts that total will grow more than 50%, to $125 billion by the end of next year, the Wall Street Journal reports.

iShares National Muni Bond ETF (MUB) – Get iShares National Muni Bond ETF Report is the largest muni bond ETF, with $24.9 billion in assets, according to ETF Data Base. Morningstar analyst Neal Kosciulek gives the fund a silver rating, the research firm's second highest after gold.

"iShares National Muni Bond ETF is a good choice for low-cost exposure to the investment-grade, tax-exempt bond market," he wrote.

"The fund provides broad, market-value weighted exposure to the municipal-bond market. It tracks the S&P National AMT-Free Municipal Bond Index, which includes investment-grade municipal bonds with at least one month until maturity and $25 million in face value … The strategy's best feature is its modest fee. At 0.07% the fund's expense ratio is 49 basis points lower than the category average."

Vanguard Tax-Exempt Bond ETF (VTEB) – Get Vanguard Tax-Exempt Bond ETF Report is the second largest muni bond ETF, with $14.9 billion in assets. Kosciulek rates it gold.

"Vanguard Tax-Exempt Bond is a great option for low-cost exposure to the investment-grade, tax-exempt bond market," he wrote.

"The fund provides broad, market-value-weighted exposure to the municipal-bond market. It tracks the S&P National AMT-Free Municipal Bond Index, which includes investment-grade municipal bonds with at least one month until maturity and $25 million in face value."

Its fee is only 0.06%.

etftrends.com

by Dan Weil

DEC 23, 2021

- MSRB Opens Second Comment Period on Regulation of Solicitor Municipal Advisors: Cadwalader
- MSRB EMMA Update to CUSIP Groups Feature.
- 2022 State Bond Caps and Deadlines: Novogradac
- No Deed, No Taxes, No Problem With These Dirt Bonds.
- Kronos Ransomware Attack Will Challenge Public Finance Issuers.
- Note Disclosures and RSI for Pensions and Other Postemployment Benefits (OPEB): GFOA Webinar
- Orrick Webinar: Financing Affordable Housing with 501(c)(3) Bonds – Replay Available
- And finally, Parent Of The Year is brought to us this week by *Davison v. Rose*, in which Brian C. Davison sued after being banned from school property following a pattern/practice of worrying behavior, including forcing his children to distribute defamatory flyers to their classmates. (Therapists everywhere thank you.) This type of disruptive behavior struck us as part/parcel of this point in time until we realized that these incidents took place in 2014. Not to worry, surely the current QAnon anti-vax madness has gentled his condition. Surely.

IMMUNITY - CALIFORNIA

Foley Investments, L.P. v. Alisal Water Corporation

Court of Appeal, Fourth District, Division 1, California - November 16, 2021 - Cal.Rptr.3d - 2021 WL 5833275

Apartment complex owner brought action against water company, asserting inverse condemnation and tort claims of nuisance, trespass, and negligence after water main running through complex repeatedly ruptured.

Following bifurcation, the Superior Court determined that water main was not a public use and that water company had fire protection immunity from tort claims. Apartment complex owner appealed.

The Court of Appeal held that:

- Water main served a private use such that eminent domain principles did not apply, and
- As a matter of first impression, fire protection was a substantial or significant factor in water company constructing and maintaining water main such that it had fire protection immunity.

Water main running through apartment complex served a private use, and thus inverse condemnation principles did not apply in apartment complex owner’s action against water company following pipe ruptures, where water company installed main pursuant to a contract with a private developer, water company constructed and maintained the main directly on the apartment property specifically to meet the flow requirements of the fire hydrants which benefited only the property, and water main did not provide service to the public at large and gate vale at the end of the main, which had not been opened in 32 years, functioned as a cap.

Fire protection was a substantial or significant factor in water company constructing and maintaining water main on apartment complex property, and thus fire protection immunity barred apartment complex owner’s nuisance, trespass, and negligence claims against water company after water main ruptured multiple times; while water main provided domestic water to the apartment complex, it also supplied water to fire hydrants on the apartment property, and but for the apartment property’s specific fire protection needs, including two fire hydrants, the main would not exist, as water company would have delivered water to the property’s boundary, from which point the developer of the complex would have been responsible for installing and maintaining onsite infrastructure.

PUBLIC PENSIONS - NEBRASKA

Abbott v. City of Bellevue

Supreme Court of Nebraska - December 3, 2021 - N.W.2d - 310 Neb. 496 - 2021 WL 5751275

Police officers and their union brought § 1983 action against city challenging its decision to increase amount it regularly deducted from officers’ paychecks to fund their retirement plan, alleging violations of federal and state constitutions.

The District Court found that, with respect to some officers, city unconstitutionally impaired its contractual obligations, and ordered city to insert certain language into document governing retirement plan. Officers and union appealed.

The Supreme Court held that:

- District court could not address issue of how defined contribution payment should be calculated;
- Supreme Court would remove language improperly inserted by district court into agreement;
- Officers and union were “prevailing parties” for purposes of entitlement to attorney fee; and
- Supreme Court would remand for reconsideration of attorney fee entitlement.

District Court could not address issue of how defined contribution payment should be calculated, in § 1983 action brought by police officers and their union against city challenging its decision to increase amount it regularly deducted from officers’ paychecks to fund their retirement plan, where district court ordered language inserted into agreement governing retirement plan, essentially entering a declaration despite no party requesting such a declaration and agreement of both parties that such a calculation would ever be necessary.

The Supreme Court would remove language improperly inserted by district court into agreement between police officers, their union, and city governing retirement plan, which addressed issue of how defined contribution payment should be calculated, in § 1983 action brought by police officers and their union against city challenging its decision to increase amount it regularly deducted from officers’ paychecks to fund their retirement plan, where amount officers would be entitled to receive if they elected defined contribution payment was not at issue, and parties agreed that it was unlikely amounts in any officer’s retirement account would ever exceed defined benefit payment, as required for an officer to receive defined contribution payment.

ANNEXATION - UTAH

South Utah Valley Electric Service District v. Payson City

Supreme Court of Utah - December 9, 2021 - P.3d - 2021 WL 5831400 - 2021 UT 68

Electric improvement district brought action alleging that cities failed to comply with statutory requirements for withdrawing annexed areas from district before starting to serve district’s customers following annexation.

The Fourth District Court entered partial judgment in cities’ favor, and district filed interlocutory appeal.

The Supreme Court held that cities had statutory authority to provide electric service to customers inside district following annexation upon payment of required reimbursements.

Cities generally have power to regulate and sell electricity within their respective boundaries, but when they annex new land, that power is limited by requirement that they either obtain consent of previous electric provider, if it falls within statutory definition of electrical corporation, or pay it reimbursement costs.

SCHOOLS - VIRGINIA

Davison v. Rose

United States Court of Appeals, Fourth Circuit - December 3, 2021 - F.4th - 2021 WL 5750449

Students’ parent filed § 1983 action against school board, its members, elementary school principal, and school system’s supervisor of security alleging that no-trespass letters issued to him that prohibited his presence on school property and attendance at any school-sponsored activities unless authorized violated his First and Fourteenth Amendment rights.

The United States dismissed claims against board, and entered summary judgment in defendants’ favor on remaining claims. Parent appealed.

The Court of Appeals held that:

- Res judicata barred parent’s claims against school board;
- Board’s policy prohibiting all personal attacks at board meetings, regardless of viewpoint, did not violate First Amendment;
- No-trespass letters were not issued in retaliation for parent’s public comments;
- Principal was entitled to statutory immunity for reporting parent’s suspected abuse of his children;
- Officials who issued and enforced no-trespass letters were entitled to qualified immunity; and
- Officials’ failure to provide parent notice prior to issuance of no-trespass letters did not violate due process.

School board’s policy prohibiting all personal attacks at board meetings, regardless of viewpoint, did not violate students’ parent’s First Amendment rights, despite parent’s contention that policy was not used in viewpoint-neutral way towards his speech; parent was interrupted and warned for talking about particular board members, discussing their children, and providing comments that were not about topic of meeting, and was allowed to speak uninterrupted, despite mentioning individual board members, when his comments focused on topic of board meeting, and other speakers who were not interrupted when they became animated did not make comments about board members.

ZONING & PLANNING - WASHINGTON

[Westridge-Issaquah II LP v. City of Issaquah]

Court of Appeals of Washington, Division 1 - December 6, 2021 - P.3d - 2021 WL 5768395

Property owners filed suit pursuant to Land Use Petition Act (LUPA), seeking review of city’s imposition of general facility charges (GFC) for utility connections on property being developed.

The Superior Court granted property owners’ petition, ordered city to refund water and stormwater GFCs, which were waived under a land development agreement, and refund the difference in the sewer GFC charged from amount set forth in development agreement. City appealed.

The Court of Appeals held that:

- GFCs imposed by city for utility connections did not invoke vesting statute;
- Building permit applications were not inextricably linked to later-filed preliminary plat application, as would invoke vested rights; but
- Even if vested rights were at issue, GFCs could not be assessed at any particular amount until developer both applied for utility connections and paid applicable fees; and
- City’s GFCs were reasonable, as required to comply with authorizing statute.

Water, sewer, and stormwater general facility charges (GFC) imposed by city for utility connections on property being developed as single-family housing were not “land use control ordinances,” and thus not subject to vesting statute for such ordinances, under which a proposed division of land was considered under ordinances in effect on land at time of submission of land use application; GFCs did not limit current owners' use of the properties or the development thereon, but instead were merely fees that increased developer's costs.

Single-family residential developer's building permit applications, which were filed prior to city's modification of terms of development agreement governing subject land, were not inextricably linked to its preliminary plat application, which was filed after changes were made to development agreement, such that preliminary plat application could not be approved unless the building permit application was also approved, thus, developer did not have a right to have its building permit applications vest to the land use laws in effect when it submitted its preliminary plat application.

Single-family residential developer did not have a vested right to have general facility charges (GFC) imposed for utility connections on it property assessed at any particular amount until it both applied to connect to city's utility systems and paid the applicable fees.

General facility charges (GFC) to be imposed by city upon single-family residential property developer for water, sewer, and stormwater utility connections, pursuant to city ordinance, were reasonable, as required to comply with authorizing statute; statute required only that connection charges established by ordinance be reasonable, such that property owners would bear their equitable share of the cost of the city's utility system, and there was no indication that the GFCs imposed were not generally proportionate to property's share of the utility system's cost.

2022 State Bond Caps and Deadlines: Novogradac

Listed below are the scheduled deadlines for submitting tax-exempt bond applications and related information. We will continually update this list as new information becomes available.

View the caps and deadlines.

Infrastructure And The Outlook For Municipal Bonds In 2022.

Summary

- The Infrastructure Investment and Jobs Act is one of several positive drivers for municipal bonds in the new year.
- The most significant impact of the IIJA for municipal bond investors is likely to be incremental supply of muni bonds.
- Heading into 2022, the municipal market finds itself on solid fundamental footing.

Continue reading.

Seeking Alpha

Dec. 16, 2021

Record-Breaking or Austere? What to Expect from the Municipal Bond Market in 2022.

Everyone agrees: the ‘real question’ is the Fed

Municipal bond market experts have different takes on what 2022 will bring, although there’s one constant: demand for the debt issued by state and local governments is likely to remain exceptionally strong.

“Big picture, the municipal market is fundamentally as strong as it’s been in a number of years,” said Paul Malloy, head of municipal investments at Vanguard.

“There was a significant amount of federal aid in 2021, tax receipts are up, market returns SPX, -1.03% have been strong, and that’s aiding pension funds,” Malloy told MarketWatch. “The real question mark into 2022 is the level of interest rates and their impact.”

Malloy believes the federal aid doled out over the past two years in response to the COVID-19 pandemic will keep municipalities “flush with cash” and less likely to sell bonds in 2022. His forecast of $400 billion worth of new issuance would make 2022 one of the leanest years of the past decade. Through November of this year, $432 billion has been issued, according to SIFMA.

In contrast, Tom Kozlik, head of municipal research for Hilltop Securities, expects a record-breaking 2022, with $495 billion in issuance. Kozlik has deemed the current moment “a golden age of public finance” because of the possibilities for spending that have been opened up by federal largesse.

While there’s no precise way to predict how the municipal market — tens of thousands of state and local governments, transportation agencies, universities, and more across the country — will behave, it’s worth noting that several sources who spoke with MarketWatch in November universally appreciated the fact that federal aid would allow them to avoid the expense — and administrative headache — of issuing bonds.

One thing is certain: relatively lean supply will continue to support bond prices. Eric Kazatsky, head of municipal strategy for Bloomberg Intelligence, reckons that the market could support $475 billion of issuance.

That will continue a stretch of outsize demand. Throughout 2021, multiple weeks in a row have seen inflows to municipal-bond funds smash records. A closely-watched metric, the ratio of 10-year muni yields to those of comparable U.S. Treasurys was at about 64% at the end of November, according to IHS Markit data, below the long-term average of about 80%, and suggesting investors have been willing to pay more for the tax advantages munis bring.

That’s Kazatsky’s premise for 2022: “buyers of municipals will still be motivated by tax avoidance, absent a large individual tax cut,” he wrote in an outlook piece, “while the bonds’ low correlation to other asset classes could prove their ‘safer’-haven status should the economy struggle in an era of rising rates.”

The question of how the economy might do – whether in the face of monetary policy normalization or just the tail end of the global pandemic – also sets up some differences among muni experts on just how to invest.

Vanguard’s Malloy thinks there are pockets of value in areas that “haven’t completely come back from the pandemic," including higher education and some student housing deals. But others are more wary: Kozlik has a cautious to negative view on higher education, noting that "college campuses are not as safe as we expected from virus spread."

And despite the fact that municipalities are in strong shape now, Kazatsky writes that he continues to favor bonds "with identifiable revenue streams vs. stand-alone general-obligation pledges" – that is, those backed by taxes. What's more, he added, if stocks pull back or interest rates spike, it could exacerbate legacy fixed costs for those governments, such as public pensions.

MarketWatch

By Andrea Riquier

Dec. 15, 2021

Top Muni Bankers Say Huge Deals, ESG Will Be 2022 Highlights.

- **Federal infrastructure plan underpins market, spurs bond sales**
- **Public-private projects, hedging products also on the agenda**

For the municipal finance professional, the new year holds the promise of elephant-sized debt deals, a potential premium for environmentally friendly bonds and a bounty of securities sales spurred by the U.S. infrastructure bill.

So say some of the top bankers in the $4 trillion market, where debt offerings have shown remarkable resilience in the second year of the coronavirus pandemic as state and local government coffers quickly recovered.

A global vaccine campaign and a massive federal economic stimulus package helped tax-exempt municipal bonds outperform almost every other fixed-income asset class this year. The market's riskiest corner, junk bonds, was the best-performing muni sector, with returns approaching 8% year to date.

"As the economy continues to grow into 2022, and if the omicron or other variants remain in check via vaccines, we expect to see increased high-yield activity next year," said Peter Hill, head of public finance at UBS Group AG.

Bloomberg News surveyed the heads of public finance at the market's top investment banks on notable trends of 2021 and their outlook for 2022. In the following Q&A, they highlight just how important the historic infrastructure package will be to their industry. And like all bond professionals, they consider the potential effect of the fastest inflation in decades.

What sectors or geographies are you prioritizing next year?

Health care and housing, two areas drastically altered by the pandemic, continue to command attention.

"Affordable housing will be one of the defining subjects of the next decade in municipal finance and will impact our market in ways not yet known," said Charles Peck, head of public finance at Wells Fargo & Co. State and local governments sold about $35 billion of housing-related debt in 2021, a roughly 80% increase from 2020, Bloomberg data show.

Gary Hall, head of public finance and infrastructure at Siebert Williams Shank & Co., is focused on how to grow his firm's higher ed, health care and housing divisions. He also seeks to expand his firm's presence in the Southeast U.S and other rural areas.

"We're looking to go downstream in k through 12, for broadband expansion and water quality, taking advantage of the infrastructure package and any kind of bridge and tunnel work that needs to be done all throughout some of these states," Hall said.

What will be the biggest themes defining the market?

Bankers overwhelmingly cited the infrastructure package, signed into law by President Joe Biden in November, as a major determinant. Some bankers speculated whether the surge in funding will lead states and cities to pull projects off the shelf.

Jamison Feheley, head of banking for public finance at JPMorgan Chase & Co., said it should be "a catalyst for new project development against a very positive credit backdrop for states and local governments."

"The infrastructure package, the length of time it took to get enacted, paused a lot of our issuer clients. They said, 'I don't want to go out and use my bond capacity, because I don't know what's going to happen with the federal government. So I'm going to wait and see what they provide," said Hall at Siebert.

He expects the market to see a larger percentage of new-money sales than in the past boosted by "elephant-sized" deals from borrowers that aren't regular bond issuers. He's "bullish" on volume, predicting between $480 billion and $490 billion of total sales. Long-term municipal bond sales so far this year total about $459 billion, according to data compiled by Bloomberg.

What are you pitching your government clients?

"With inflation at 40-year highs, the prospect of higher rates in the future seems quite real." said Bob Spangler, head of municipal finance at RBC Capital Markets. "For new-money projects that are one to three years out, issuers should consider rate locks or other hedging products to reduce their interest rate exposures."

"As our clients return to whatever their new 'normal' is, there's a lot of potential motivators for M&A activity or other public private partnerships," Peck said. "They could be looking for ways to transfer risk that's not core to their mission, monetize assets to diversify revenue streams, or complete projects which will ultimately be owned and managed by a governmental entity."

What are the implications of federal stimulus for the muni-market next year?

In an attempt to blunt the pandemic's impact on the economy, the federal government provided a historic surge of stimulus dollars to state and local governments. Bankers at UBS, Wells Fargo, Stifel Financial Corp. and JPMorgan see a strong outlook for the sector buoyed by higher-than-expected tax receipts and spending increases.

"State and local governments are in good shape. Strong sales tax receipts, income taxes, and federal transfers have bolstered balances," said Betsy Kiehn, head of municipal capital markets at Stifel. "The question now is primarily how they spend it and whether they put in programs which require long term recurring revenue sources that are not identified."

"Increased spending and positive economic indicators should help perpetuate the positive rating trends for issuers of all stripes in 2022," added UBS's Hill.

How is ESG being viewed in the municipal bond market?

Municipals may have been the original impact investing market, with governments selling debt for decades to improve water systems, fund affordable housing and public education. In recent years, bonds specifically branded with a "green" or "social" label have grown in prominence.

Bonds classified as ESG, for environmental, social or governance purposes, are a focus for both issuers and investors. "While there are currently no measurable or consistent pricing benefits, the ability for issuers to diversify their investor base may be beneficial long term," Kiehn said. The impact of climate change could spur more debt sales as the need grows for improvements to water systems, flood control projects and resiliency efforts like seawalls, she said.

Peck at Wells Fargo said they've seen a few instances of a "greenium," that is, a relatively lower cost of capital, but overall, credit quality, liquidity and relative values are still the biggest price drivers.

"While some transactions have seen a modest pricing benefit, the real advantage to issuers is exposure to a broader, more diverse group of investors," he said. "This can result in an indirect pricing benefit by widening distribution."

What are you most looking forward to in 2022?

Wells Fargo, RBC and JPMorgan head bankers voiced an eagerness to return to normalcy — continued face-to-face meetings with clients and colleagues and progress toward the end of the pandemic.

"The second half of 2021 was great as we moved back to in-person interactions with clients and colleagues and I'm hopeful we can continue to move forward," said Feheley of JPMorgan.

Bloomberg Markets

By Danielle Moran and Nic Querolo

December 17, 2021, 8:59 AM PST

Vanguard Sees Muni Bond Supply Slowing to $400 Billion in 2022.

- **Issuers are flush with revenue and aid, says Vanguard's Malloy**
- **Forecast on lower end of muni estimates compiled by Bloomberg**

Vanguard, one of the largest municipal fund managers, expects states and localities to slow bond sales by at least 11% to about $400 billion next year because of a faster than anticipated revenue rebound and billions of dollars in federal aid.

"A lot of municipals are flush with cash," Paul Malloy, head of municipal investments at Vanguard, said in an interview. "They don't need to borrow as much." The firm has almost $267 billion in muni assets.

Vanguard's forecast, including municipal-backed corporate debt, is lower than 2022 forecasts from 11 other strategists compiled by Bloomberg. The 2022 supply estimates ranged from Morgan

Stanley's projection of $420 billion to Bank of America's forecast for $550 billion.

Last year, municipal issuers sold about $454 billion in long-term debt as the pandemic shuttered businesses, drove up unemployment and led tax revenue to drop temporarily. With three weeks left in 2021, long-term municipal issuance has reached about $450 billion, according to data compiled by Bloomberg.

On Credit

Malloy expects lighter sales next year because state and local governments have "a lot of cash" and municipal issuers "are in really great shape" from a fundamental credit perspective, he said. The pandemic's revenue hit has subsided for many.

Texas, among the largest state issuers, is an example of the pull back in debt overall, he said. The state usually borrows to prevent a deficit until more revenue arrives.

The state's total sales tax revenue for the three months ending in November 2021 rose 22% from the same period a year ago and is up almost 16% compared to 2019, according to a statement on the Texas comptroller's website.

In addition to rebounding revenue, state and local governments are getting $350 billion from President Joe Biden's American Rescue Plan Act.

On Rates and Valuation

Another reason to reduce borrowing next year is the cost may increase for municipal governments, Malloy said. The 10-year AAA muni benchmark could move up by mid-2022 from the current 1.05%, driven by yields in the Treasury market, Malloy said.

Muni issuers have benefited from rates hovering around historical lows partly because supply largely has not kept pace with investor demand this year and the imbalance has kept a lid on yields.

"It's not going to be as cheap to borrow as it has been," Malloy said. "It's the macro story."

One of the biggest questions for 2022 will be valuations, Malloy said. The muni to Treasury ratio is likely to range between 70% and 75% for debt maturing in 10 years, he said. The ratio was about 71.3% at the last close.

The ratio may hover around 80% for 30-year debt and 50% for bonds maturing in two to five years, he said.

On Covid

The pandemic is "an X-factor," Malloy said. "Always out there for the foreseeable future."

The virus and its variants will contribute to volatility in the market but medical advances and improvements in responses globally mean Covid "doesn't have the same potential for scarring" as it did at the outset, he said.

Bloomberg Markets

By Shruti Singh

December 10, 2021, 11:26 AM PST

Sales of Municipal Bonds That Won't Deliver for Months Reach Record.

- **State and local forward delivery sales at $15 billion in 2021**
- **Issuers look for savings as investors seek yield: Parametric**

State and local governments seeking savings from historically low interest rates before a series of expected hikes in 2022 are driving record sales of bonds that won't deliver for several months.

Sales of municipal bonds with a so-called forward delivery structure — meaning borrowers can lock in rates months before accruing interest owed to investors — reached about $15 billion in 2021, which is more than double the $6.7 billion this time last year and an-all time high, according to data compiled by Bloomberg.

The type of bond has grown in popularity ever since issuers in the $4 trillion municipal bond market were barred from a key refinancing tactic known as tax-exempt advance refunding in a 2017 tax change. But issuance this year has reached a fever pitch amid broad anticipation of higher refinancing costs next year. Sales have come from issuers in California, Maine, New Jersey, Maryland, Ohio, Illinois, Oklahoma, Arizona and Hawaii.

"They are looking for more creative ways to lock in savings," said Brian Barney, a managing director and portfolio manager for Parametric Portfolio Associates, which holds $43 billion in muni assets. "If rates remain relatively low, they will continue to use it potentially to this extent. If they do tick higher, then I expect we see this forward issuance number come down."

The Federal Reserve on Wednesday signaled that a series of interest-rate increases are coming down the pipeline, starting with three hikes in 2022. Barney said the market has already priced in most of the potential rate increases, and if they don't move too much, issuer interest in forward delivery will continue. In the meantime, the bonds should also remain attractive for investors in a low interest environment as they offer some additional yield, Barney said.

"The market has gotten efficient at pricing the per-month spread (discount) based on delayed settlement and buyers have grown more comfortable with the process," Kimberly Olsan, senior vice president of municipal bond trading at FHN Financial, said in an email. "These structures could be expected to continue as long as restoring advance refundings are off the table."

The Maine Turnpike Authority issued $102.34 million forward delivery bonds to refund $124.9 million from a 2012 series, according to an emailed statement from Douglas Davidson, the agency's chief financial officer and treasurer. The savings from the sale and redemption will strengthen the authority's financial ratios, and the issuance "freed up" about $23 million under its legislative bond cap, he said.

"The authority chose to use the forward delivery option in order to lock in savings at the current interest rates," Davidson said. "The authority has been concerned with high inflation and the uncertainty of future interest rates."

Bloomberg Markets

By Shruti Singh

December 16, 2021, 10:05 AM PST

— With assistance by Danielle Moran

The Municipal Market is Getting Riskier. Is Anyone Paying Attention?

There's so little new muni debt coming to market that bondholders snatch anything they can get, and relaxed standards are spreading

When CalPlant, a northern California manufacturer of fiberboard from rice farming waste, filed for bankruptcy in October, it may not have come as a complete surprise.

The company had issued $344 million of municipal bonds since 2017 in order to build a factory and start manufacturing, but faced construction overruns even before the COVID-19 pandemic hit, according to various reports. It defaulted on a payment in 2020, but just months later tapped existing bondholders for more cash.

CalPlant is hardly the first specialty project to go bust in the municipal market. A monorail running around Las Vegas has been bankrupt twice, and the American Dream mall in New Jersey has struggled for years to get off the ground. CalPlant's initial bond offering, with an 8% interest rate and investments from high-yield asset managers, make it very different than the tax-backed, tax-exempt bonds sold to wealthy households who simply want to preserve their capital.

Continue reading.

MarketWatch

By Andrea Riquier

Dec. 17, 2021

Defaults Are Quickening in Muni Bonds in Warning Sign for High-Yield Investors.

- **Time between issuance, impairment about half 2014 level: MMA**
- **Trend could blunt demand for riskier issuance, Fabian says**

Defaults and impairments are coming at a faster clip in the $4 trillion municipal-bond market, a potential warning sign for investors in junk munis, the best-performing sector of state and local-government debt.

The trend comes against a backdrop in which riskier issuers have gained more market access and investors awash in cash have grown more comfortable with weaker protections as yields remain well below historical averages. For muni deals that do become impaired, the time between issuance and such an event has tumbled to 32 months on average, less than half the level seen in 2014, Municipal Market Analytics data show.

The phenomenon holds for both risky and safer sectors as asset managers across the spectrum face reinvestment pressure. But weaker issuers have the most at stake, as broadly accelerating impairments could erode the segment's performance, crimping demand and making it harder for troubled borrowers to recover.

"More defaults and impairments, happening faster after issuance, could blunt the tip of high-yield demand," said Matt Fabian, a partner at MMA. "And if high-yield demand pulls back, it means less available rescue financing, so more defaults."

In MMA's definition, impairment refers to bonds in default or those that have tapped emergency means or violated a covenant.

Year to date, Bloomberg Intelligence data show that over $4.4 billion of securities have faced distress or default. In the week ended Thursday, seven deals totaling $102 million joined the ranks.

Munis' exceedingly low level of defaults relative to corporate debt, along with the improving U.S. economy, a wave of federal aid and talk of higher income taxes, have helped drive investor interest in junk offerings.

Muni Haven

In a year when munis overall have offered a haven in fixed income, earning about 1.5%, high-yield has been a standout, earning 7.7% in 2021, Bloomberg index data show.

The cash flowing in "doesn't just intensify demand, it also forces buyers to capitulate on credit conditions that they would normally require," Fabian said.

Those weaker underwriting conditions, such as sufficient reserves, contribute to the shrinking default window, he said. It's also easier for riskier projects to access capital through entities like conduits, and low yields have driven investors into more and more speculative deals.

The rise of passive investing and increased diversification has helped larger funds insulate themselves against defaults and distress. But for smaller asset managers with less liquidity and diversification, struggling deals can carry more weight.

"If you're a small, relatively concentrated asset manager, you have to be more careful than you used to be," Fabian said.

Bloomberg Markets

By Nic Querolo

December 14, 2021, 10:56 AM PST

[No Deed, No Taxes, No Problem With These Dirt Bonds.]

- **Utah, Colorado developers finance with 'cash flow' securities**
- **In dirt-bond twist, investors have no property to foreclose on**

Question: What do you call a dirt bond without any dirt?

Answer: Cash-flow limited-tax general obligation bonds.

"Dirt bonds" are used to help pay for new real estate development, and have been a prominent, if risky, feature of the municipal-bond market for decades, especially in fast-growing states like California, Colorado, Texas and Florida. They may have different names in each of the states, but are typically sold with no or low credit ratings and carry comparatively high yields. The bonds are repaid by property taxes and special assessments, and investors' ultimate security is foreclosure on the property.

But now we have a dirt bond without any property to foreclose on. Bond buyers are still helping to pay for a new real estate development, but they don't get the deed to the land should it stall or never take place.

That's not all the bond buyer doesn't get. Payment dates may come and go, but the issuers of these bonds tell the buyers up front that they won't get paid principal or interest until a date years in the future, and maybe not even then. These payments won't be made until people move in and the cash — property taxes — starts to flow.

Theoretical Maturity

These bonds have a maturity date, but that's only theoretical; it may take even longer to catch up on those accrued debt-service payments. And if you're not caught up by a certain year after that, you're out of luck, because these bonds also have a termination date beyond which the bondholder's claims are worthless.

I hadn't seen such a thing before. I couldn't even have imagined such a thing and called it a municipal bond. Perhaps we are at a certain point in the credit cycle, where investors are willing to absorb increasing amounts of risk. And the risk is undeniable. Land-secured deals account for about $2.3 billion of munis currently in payment default, or about 18% of the total, excluding Puerto Rico, Municipal Market Analytics data show.

This particular brand of land deal seems to have made its debut in Utah this year, but it's been used in Colorado for a few years. In Utah, the structure appears to have reached perfection, or maybe the vacation-home market there is red hot. Muni-financed development deals appear to be revving up there. Of the 66 that have been sold in the state, three were from 2009, one in 2010, six in 2013, nine in 2020 and 47 this year, data compiled by Bloomberg show.

Consider, for example Pine View Public Infrastructure District No. 1, which in November sold $13.8 million in cash-flow limited-tax GOs. The unrated deal was sold through a preliminary limited offering memorandum to qualified institutional buyers in minimum denominations of $500,000.

The proceeds of the deal are going to help pay for a development of 1,202 single-family homes on more than 300 acres in Toquerville, Utah, which had a population of 1,870 in 2020, according to the offering documents, and which is in southwest Utah near Zion National Park.

There's a helpful aerial map of Pine View PID No. 1 in the memorandum and there's not a lot there. It says so numerous times in the memorandum. Home construction hasn't commenced, and isn't expected to until the third quarter of 2022.

And then, these words: "It is not anticipated that there will be any Pledged Revenue available to pay accrued interest on the Bonds until 2025, and it is not anticipated that there will be any Pledged Revenue to pay principal on the bonds until 2042."

'No Guarantee'

The memorandum goes on to state: "These dates represent a forecast and there is no guarantee that any payments will be made on or after such date or, further, that the Bonds will be repaid prior to their discharge date of March 1, 2062."

These are relatively new creatures in MuniLand, "cash flow" securities. There's no definition of "cash flow securities" available in the Municipal Securities Rulemaking Board's Glossary, for example.

And yet, there's a market for such things. These Pine View Public Improvement District No. 1 bonds were priced by underwriter D.A. Davidson at par to yield 6% in 2051, which is 448 basis points above what top-rated issuers expect to pay. The underwriter didn't respond to an email for comment. A call to the developer wasn't immediately returned.

My first reaction to "cash flow securities" was sheer amazement, and my second was "I love these," because they're the ultimate manifestation of dirt bonds.

Why do such things usually default? Because they run out of time. Because the developers can't get the houses built and sold fast enough. Because the fuse is lit the day the bonds are priced. I bet we'll see a lot more such deals.

Bloomberg Markets

By Joseph Mysak Jr

December 13, 2021, 9:25 AM PST

— With assistance by Kenneth Hughes

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

GFOA 2021 Awards for Excellence Winners Announced.

Learn how this year's award winners provide inspiration, model examples, and provide implementation guidance for others looking to adopt best practices or to develop creative or innovative solutions.

VIEW WINNERS

NASBO Fiscal Survey of States.

Overview – Fall 2021

With data gathered from all 50 state budget offices, this semi-annual report provides a narrative analysis of the fiscal condition of the states and data summaries of state general fund revenues, expenditures, and balances. The spring edition details governors' proposed budgets; the fall edition details enacted budgets.

State general fund spending is projected to grow 9.3 percent in fiscal 2022 compared to fiscal 2021 levels, according to states' enacted budgets. This spending increase is driven by improving revenue outlooks for states as well as a host of one-time factors.

Other key highlights from the report:

- General fund spending grew **4.3 percent** in fiscal 2021 to total $931.7 billion, above originally enacted levels but still slightly below governors' proposed budget levels pre-COVID-19.
- **47 states** reported fiscal 2021 general fund revenue collections came in above original budget projections.
- Fiscal 2021 general fund revenue grew **14.5 percent** over fiscal 2020 levels, with this increase partially driven by the impact of the tax deadline shift, inclusion of federal funds, borrowing, and other revenue sources in a few states, and a lower baseline in fiscal 2020.
- In the aggregate, combined fiscal 2020 and fiscal 2021 general fund revenues came in **2.2 percent** above pre-COVID-19 projections.
- Fiscal 2022 enacted budgets are based on general fund revenues that are **2.6 percent** below preliminary actual levels for fiscal 2021; revenue forecasts used to build enacted budgets were mostly developed earlier in calendar year 2021, before the most recent uptick in collections.
- **32 states** (out of 42 states able to report early in the fiscal year) indicated that fiscal 2022 collections were coming in ahead of budget forecasts, while 10 states said they were on target.
- States adopted a mix of increases and decreases in taxes and fees, resulting in a projected net revenue change in fiscal 2022 of **-$2.9 billion** – including $1.7 billion in general fund revenue reductions (representing less than 0.2 percent of total general fund revenues forecasted in enacted budgets for fiscal 2022).
- Rainy day fund balances reached a new record level of nearly **$113 billion** in fiscal 2021 due mainly to stronger than anticipated revenue growth, with 35 states reporting increases. The median balance as a share of general fund spending is **9.4 percent**.
- Total balances increased in fiscal 2021, nearly doubling from fiscal 2020 levels, and **46 states** reported total year-end balances greater than 10 percent as a share of general fund spending.

Report Summary

Full Report

Kronos Ransomware Attack Will Challenge Public Finance Issuers.

Fitch Ratings-New York/Chicago/Austin-21 December 2021: The recent breach of Ultimate Kronos Group's (UKG) Kronos Cloud Solutions platform could pose significant, but temporary, management challenges for public finance entities that use the Kronos platform through the holiday season, says Fitch Ratings. While we do not anticipate that the UKG breach will have meaningful credit implications for individual public finance entities that use Kronos, the breach continues to reinforce the necessity of robust third-party risk management strategies and identification of critical dependencies for public finance issuers. The attack further highlights the importance of cyber emergency preparedness and response strategies for the public finance sector.

The breach has already impacted a large number of public finance entities across the country, with some of the most notable the New York Metropolitan Transportation Authority, the City of

Cleveland, the state of West Virginia, the Oregon Department of Transportation, the University of California system, and Honolulu's EMS and Board of Water Supply. Though many high-profile public finance organizations have disclosed being impacted, the actual number could be much larger.

UKG is the provider of one of the most popular and widely used payroll and workforce tracking systems for public finance entities. On Monday December 13, UKG announced that it was the victim of an ongoing ransomware attack affecting the Kronos Private Cloud, which hosts UKG Workforce Central, UKG TeleStaff, Healthcare Extensions, and Banking Scheduling Solutions. The company further disclosed that the Kronos Private Cloud solutions systems are currently unavailable and it may take up to several weeks to restore system availability for clients. The breach is forcing many issuers across the spectrum of public finance to resort to manually tracking and estimating employee hours, having to issue paper paychecks and possibly causing paycheck delays during the holidays.

The sector most impacted by the UKG ransomware attack within public finance is healthcare, where Kronos' payroll and workforce solutions systems have been popular. The breach should not affect clinical outcomes or add meaningful costs, except some added expenses activating contingencies to track hours and pay workers. That said, the timing is especially inopportune for the sector, with hospitals nationwide already grappling with increased Covid-19 cases amid the growth in the Omicron variant. Indeed, the American Hospital Association (AHA) stated that some hospitals and health systems have been impacted by this ransomware attack and urged all third-party providers that serve the healthcare community to examine their cyber readiness, response and resiliency capabilities.

In addition to the near-term challenges posed to public finance entities from the current unavailability of critical payroll systems, some entities have voiced concerns over data privacy associated with the UKG breach. According to a statement released from the City of Cleveland, some of the city data accessed may have included certain employees' first and last names, addresses, last four digits of the social security numbers, and employee ID numbers.

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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.

Bloomberg Launches U.S. Municipal Bond Impact Index to Track Green, Social, and Sustainability Bonds.

NEW YORK, Dec. 15, 2021 /PRNewswire/ — Bloomberg today announced the launch of the Bloomberg U.S. Municipal Impact Index designed to track the market of municipal bonds categorized as Green, Social, and Sustainability. The index currently tracks over 2,800 securities and is the first such standardized measure of the U.S. municipal tax-exempt investment grade impact bond market.

The index is derived from Bloomberg Index Services Limited's (BISL) flagship Municipal Index (Bloomberg Ticker: I00730) and utilizes Bloomberg's data and its municipal data analysts' research to individually vet and categorize as Green, Social or Sustainability municipal bonds on the Bloomberg Terminal. For inclusion in the index, a bond must either be self-labeled as Green, Social or Sustainability directly from an initial offering, reviewed by independent assurance providers, or use 100% of proceeds for a project in line with the International Capital Market Association (ICMA) Principles. Additional sub-indices dedicated to tracking Green, Social, and Sustainability municipal bonds were also launched as part of a suite of Municipal Index Family.

"Investor demand for municipal impact bonds has been growing and its market value has more than doubled in the last three years, but participants have lacked a standard reference point for ESG-adherent securities," said Nick Gendron, Global Head of Fixed Income Index Product at Bloomberg. "We believe the Bloomberg U.S. Municipal Impact Index will hold broad appeal for both ETF product creation and traditional benchmarking while also providing a useful tool for in-depth research of this growing segment of the municipal bond market."

Eligible bonds within the index are required to have principal and interest denominated in USD, at least one year until final maturity, and hold an investment grade rating. Only fully tax-exempt issues are included, and rebalancing will occur on a monthly basis. Bloomberg provides a suite of green bond market governance, research, data, and analytics to help users identify green securities and assess alignment to the Green Bond Principles developed by the International Capital Markets Association.

The index was launched on December 13, 2021, with history calculated back to January 1, 2019. Bloomberg clients can access the index using the ticker I36676US Index .

Bloomberg provides an independent, transparent approach to indexing for customers across the globe. For more information, please visit Bloomberg Indices. To learn more about Bloomberg's ESG bond data, please visit Bloomberg ESG Data.

Muni Market Record Numbers In 2021 (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Markets, has the latest on municipal bonds. He discusses a record year for municipal markets and Puerto Rico looking to come out of bankruptcy. Hosted by Paul Sweeney and Kailey Leinz.

Listen to audio.

Bloomberg Radio

Dec 17, 2021

Fitch Ratings Updates Criteria for U.S. Public Housing Authority Capital Fund Revenue Bonds.

Fitch Ratings-New York-16 December 2021: Fitch Ratings has published an updated criteria report titled "U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Rating Criteria." The report replaces the prior report of the same title published on Dec. 22, 2020.

Revisions to the criteria include minor editorial changes and clarification of the debt service coverage approach for Capital Fund Program pooled financings that are not cross-collateralized. The key elements of Fitch's US. Public Housing Authority Capital Fund Housing Revenue Bonds Rating criteria remain consistent with those of its prior criteria report.

The updated criteria is not expected to result in changes to the ratings of existing transactions.

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

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Fitch: Job Recovery Picks up Steam for U.S. Metros; Omicron a Concern

Fitch Ratings-New York-21 December 2021: Job recoveries received a jolt for U.S. major metropolitan statistical areas (MSAs) thanks in large part to strong performance in the Midwest and Western parts of the country, according to Fitch Ratings in its latest U.S. Metro Labor Markets Tracker.

The median jobs recovery rate among major MSAs rose to 75% in October 2021 from 72% in September. Additionally, 48 out of 53 major metros experienced employment growth on a month-over-month basis, nine more than the previous month.

Potentially weighing down job growth in the coming months will be the Omicron variant of the coronavirus, with infections becoming more widespread. 'Vaccine mandates continue to be contested in courts, though the availability of vaccines for children ages 5 to 12 should further decrease risk of hospitalization,' said Fitch Senior Director Olu Sonola.

The Midwest's median recovery rate for major metros rose to 80% in October from 77% in September, with Chicago registering the highest recovery rate increase among major Midwestern metros in October at 4.7 pps. Strong growth was also evident in the major metros in the West (75% for October) with San Jose, San Diego and Riverside all standouts.

By contrast, the Northeast continues to be a laggard. New York City, the nation's largest employment center, trails the overall U.S. and broader Northeast recovery rates. Buffalo and Providence saw recovery rate declines in September, while Hartford posted a 3.8-pp recovery improvement for the month.

'U.S. Metro Labor Markets Tracker' is available at 'www.fitchratings.com'.

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TAX - CALIFORNIA

Lejins v. City of Long Beach

Court of Appeal, Second District, Division 1, California - December 1, 2021 - Cal.Rptr.3d - 2021 WL 5628744

Property owners petitioned for writ of mandate challenging surcharge municipality imposed on its water and sewer customers by embedding surcharge in rates water department charged its customers for service.

The Superior Court granted judgment for owners and awarded them attorney fees. Municipality appealed.

The Court of Appeal held that:

- Voter-approved surcharge had been imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes;
- Voters' approval of surcharge did not prevent it from violating constitutional provision governing special taxes; and
- Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes.

Ability of person to own real property without obtaining water or sewer service did not prevent voter-approved surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries from being imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes.

Surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries violated constitutional provision governing special taxes although it had been approved by voters.

Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes; although surcharge raised unrestricted revenue to support variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries, it did not reimburse municipality for costs associated with water department's use of its infrastructure.

TAX - WYOMING

Winney v. Hoback Ranches Property Owners Improvement and Service District

Supreme Court of Wyoming - November 24, 2021 - P.3d - 2021 WL 5504238 - 2021 WY 128

Landowners in rural residential subdivision brought action against neighbor and property owners improvement and service district, alleging violations of protective covenants and illegal imposition of property tax levies, and neighbor and district filed counterclaim alleging that landowners violated protective covenants.

The District Court granted summary judgment for district and, after a bench trial, entered judgment for neighbor on claim against him. Landowners appealed.

The Supreme Court held that:

- District's authority to levy taxes was not limited to eight mills as outlined in petition to form district;
- Protective covenant requiring buck and pole fencing applied to subdivision's perimeter fence on landowners' property;
- District's alternative argument as to inequities in enforcing covenant as to fencing was best left for a first determination on remand; and
- Neighbor's performance of road maintenance and snowplowing for subdivision did not violate covenant prohibiting commercial activity.

Authority of property owners improvement and service district, as a political subdivision of state, to levy taxes in rural residential subdivision in county was not limited to eight mills as outlined in petition to form district, where Improvement and Service District Act did not impose a mill levy or other cap on a district's authority to tax, Act specifically allowed a district to change amount or rate it charged for use of improvements and services it provided, and landowners were on notice that any district that was formed would have authority to collect revenue and to "change the amount or rate thereof.

How Government Funding Dysfunction Limits Bipartisan Infrastructure Law Implementation: Nossaman

How Government Funding Dysfunction Limits Bipartisan Infrastructure Law ImplementationThe Infrastructure Investment and Jobs Act or "IIJA" (P.L. 117-58) passed on a bipartisan basis in both the House and Senate and was signed by the President one month ago today, on November 15, 2021. One could have assumed that federal agencies would begin allocating the new funding and commence implementation of the IIJA as soon as it became effective. Unfortunately, that is not the case, but for reasons that may not be readily apparent … Continue

Nossaman LLP

By Shant Boyajian on 12.15.2021

TAX - LOUISIANA

Calcasieu Parish School Board Sales & Use Department v. Nelson Industrial Steam Company

Supreme Court of Louisiana - December 10, 2021 - So.3d - 2021 WL 5860861 - 2021-00552 (La. 10/10/21)

School board sales and use department and administrator of the department filed suit against steam company for failure to pay use tax on its purchase of limestone.

The District Court granted summary judgment in favor of plaintiffs. and denied company's exceptions, motion for summary judgment, and cross motion for summary judgment. Company appealed. The Court of Appeal reversed. The Supreme Court reversed and remanded. The Third Circuit Court of Appeal reversed. Application for review granted.

The Supreme Court held that amendment to use tax provision for materials further processed was new tax, within meaning of Tax Limitation Clause.

Amendment to use tax provision for materials further processed into a byproduct for sale, which included as taxable incidental byproducts that had previously been exempt from use tax as sales for further processing was "new tax," within meaning of Tax Limitation Clause, requiring that any levy of a new tax or tax increase be approved by two-thirds of the state legislature.

U.S. Bond Funds Post Biggest Weekly Outflow in 20 Months - Lipper

Dec 17 (Reuters) – U.S. bond funds witnessed big outflows in the week to Dec. 15 as a surge in inflation solidified investor expectations that the Federal Reserve would be more aggressive in unwinding its stimulus support to counter soaring prices.

According to Refinitiv Lipper data, U.S. bond funds faced net selling of $7.48 billion, that marked the biggest outflow since April 8, 2020.

Dec 17, 2021

FINRA Fines RBC Over $280,000 for Violating Muni Rule.

RBC Capital Markets, LLC agreed to pay more than $280,500 to settle Financial Industry Regulatory Authority charges that it violated the Municipal Securities Rulemaking Board's suitability rules when it failed to establish, maintain, and enforce a supervisory system with respect to high-yield municipal bonds.

In a December 14 Letter of Acceptance, Waiver and Consent (AWC), RBC agreed to pay a total fine of $550,000, plus restitution and interest of over $450,000 and to be subject to a censure.

In so doing, RBC neither admitted nor denied FINRA's findings that it violated NASD Rule 3010(a) and 3010(b) and FINRA Rules 3110(a) and (b) and 2010 with respect to the firm's supervision of high-yield corporate bonds, and MSRB Rules G-27(b) and (c) with respect to high-yield municipal bonds.

Specifically, FINRA found that for a period of three years, from July 2013 to June 2016, RBC, which has been a FINRA regulated broker-dealer since 1993, failed to identify for review, more than 100 customer accounts that had conservative profiles for potentially unsuitable concentration levels of high-yield bonds, i.e., those with a higher risk of default.

Under MSRB Rule G-27(b), municipal dealers are required to establish and maintain a supervisory system, which includes written supervisory procedures that reasonably ensure compliance with applicable securities laws.

FINRA Rules 2111 and 3110(a) have similar requirements for supervision, diligence and suitability. For example, under FINRA Rule 2111, member firms must have a "reasonable basis to believe that a recommended securities transaction or investment strategies is suitable for a customer based on information obtained through reasonable diligence of the firm."

In this case, FINRA found that RBC's supervisory system did not flag recommendations that resulted in potentially unsuitable concentrations of high-yield bonds in certain customer accounts. FINRA also concluded the firm's procedures did not sufficiently address suitability factors that its representatives should consider before recommending high-yield bonds.

For example, FINRA said that for a number of years, RBC's procedures did not provide guidance as to what proportion of a customer's portfolio should be invested in those high-risk products.

Additionally, FINRA found that RBC had daily and monthly recommended automated alerts designed to identify potentially unsuitable concentrations of high-yield bonds. However, FINRA concluded the alerts did not function as intended because RBC changed the tax coding of municipal bonds in its system in 2013.

The change "inadvertently disabled the ability of the high-yield bond alerts to identify concentration issues for further assessment," FINRA said.

Additionally, FINRA concluded that RBC did not test its alerts and so was not aware the system wasn't functioning properly. According to the AWC, the firm realized the problem in 2015, but did not fix the system until 2016 and failed to adopt alternate measures to identify potentially unsuitable concentrations in customer accounts in the meantime.

As a result, FINRA found that RBC "did not review more than 100 conservative customer accounts for potentially unsuitable concentrations of high-yield corporate and municipal bonds." Some of those accounts contained high-yield bond concentrations more than six times higher than the thresholds set by the firm.

Consequently, FINRA charged RBC with failing to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with the relevant MSRB rules and imposed a censure, fine, and restitution and interest as sanctions.

Regarding the AWC, Nicole Garrison, director of corporate content, communications and social media for RBC Wealth Management-U.S., said, "we are deeply committed to careful management of the wealth clients entrust to us. As a firm, we pride ourselves on having strong policies and procedures in place to protect our clients. In the rare instance those policies and procedures fall short, we take steps to address them."

Garrison added, "We fully cooperated with FINRA and are pleased to have amicably resolved this case. This matter involves restitution to just 20 accounts and an issue that occurred and was fixed more than five years ago."

By Kelley R. Taylor

BY SOURCEMEDIA | MUNICIPAL | 12/16/21 01:59 PM EST

MSRB EMMA Update to CUSIP Groups Feature.

Issuers – we heard you. In response to stakeholder feedback the MSRB has introduced a completely redesigned "CUSIP Groups" feature that allows issuers to save a group of CUSIPs to use for future disclosure filings submitted to the EMMA.

Watch our tutorial.

Puerto Rico Bankruptcy-Exit Plan Offers Island a Fresh Start.

- **Workout cuts $33 billion of debt, creates pension reserve fund**
- **Exit 'removes a huge cloud' over the economy: Marxuach**

Puerto Rico is inching closer to ending its more than four-year bankruptcy as the judge overseeing the workout is reviewing a restructuring plan that cuts billions in debt, fixes a broke pension system and potentially returns the commonwealth to balanced budgets.

U.S. District Court Judge Laura Taylor Swain may rule as soon as next month on the debt adjustment deal. If she approves it, Puerto Rico will be able to move past its bankruptcy and focus on boosting its economy and modernizing the island's electrical grid to end chronic outages.

"It removes a huge cloud that's been hanging over the economy for four years now," said Sergio Marxuach, policy director at the Center for a New Economy, a San Juan-based research institute that analyzes the commonwealth's finances. "We can start to change the narrative from 'Puerto Rico is in bankruptcy' to 'Puerto Rico is recovering,' which is positive in terms of attracting investment."

Puerto Rico's been in bankruptcy since May 2017 after years of borrowing to cover operating expenses, economic contraction and population decline as residents left to find work on the mainland. Since then, natural disasters like Hurricane Maria — which left many Puerto Ricans in the dark for a year — as well as political turmoil and the pandemic delayed efforts to emerge from the largest debt restructuring ever in the $4 trillion municipal-bond market.

The lengthy process has pushed Puerto Rico's bankruptcy costs to more than $1 billion.

Debt Service

The debt plan would slash $33 billion of debt and other obligations, including cutting $22 billion of bonds, to $7.4 billion. Investors would exchange their holdings for a lesser amount of new bonds, reducing what the government owes. Bondholders would also receive $7 billion in cash and a so-called contingent value instrument that would pay out if Puerto Rico's sales-tax collections surpass estimates.

The overall reduction means Puerto Rico would only have to pay an average of $666 million for debt service on commonwealth-guaranteed bonds annually for the first 10 years, down from an average $1.6 billion.

The workout plan also is intended to help fix the commonwealth's broke pension system — which owes current and future retirees an estimated $55 billion — by establishing a reserve fund that Puerto Rico would contribute to annually.

Still, Puerto Rico lawmakers likely will struggle to balance budgets as the commonwealth must allocate about $2.3 billion each year in pension payments to retired public workers and as Medicaid costs may increase.

Retirement costs could rise as island lawmakers passed legislation to boost pension benefits for public workers. A federally appointed financial oversight board is asking the court to pre-empt those laws. The judge late Tuesday asked the board for more details to justify nullifying the legislation.

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

'Grow the Economy'

The commonwealth's ability to pay debt service once out of bankruptcy also depends on its economy growing after federal disaster aid and pandemic funds dry up.

"We need to come up with a medium to longer-term plan to grow the economy," Marxuach said.

Investors are watching to see if Puerto Rico leaders stick to sound fiscal policies once the oversight board is disbanded. The panel is set to expire after four consecutive years of balanced budgets and when the commonwealth regains access credit markets.

"There's a lot of uncertainty about where Puerto Rico policies will go," said Matt Fabian, a partner at research firm Municipal Market Analytics. "Will we return to the early 2000s of how Puerto Rico ran itself in or will Puerto Rico actually run itself similar to how other states run themselves?"

Prices on some commonwealth general obligations bonds are trading higher than what bondholders will receive in the exchange as investors factor in the upfront cash payment and potential sales-tax revenue. General obligation bonds with an 8% coupon and maturing in 2035 traded Tuesday at 89 cents on the dollar, above the 67.7 cents that bondholders will receive for that security, according to data compiled by Bloomberg.

The oversight board that manages Puerto Rico's bankruptcy negotiated the debt adjustment deal rather than the commonwealth's elected officials. That has created animosity on the island against the oversight board, especially as the panel has sought to cut spending on colleges and aid to municipalities while lawmakers have balked at cuts to public employee pensions. Governor Pedro Pierluisi supports the debt restructuring plan.

"The last thing you want is the people nominally in charge working against the plan," said Steven Rhodes, a retired federal judge who oversaw Detroit's 2013 bankruptcy. In Puerto Rico, "the people and their leaders feel cut out of the process."

Bloomberg Markets

By Michelle Kaske

December 15, 2021, 4:00 AM PST Updated on December 15, 2021, 6:04 AM PST

— With assistance by Steven Church

MSRB RFC: New Draft Rule G-46

The MSRB is requesting a second round of comments on a new draft Rule G-46 to codify obligations of solicitor municipal advisors. Comments are due March 22, 2022.

[Read the request for comment.]

[GFOA Alliance for Excellence in School Budgeting Winter Meeting.]

January 13, 2022

Details:

The Alliance for Excellence in School Budgeting is a group of 100-plus school districts working on implementing GFOA's Best Practices in School Budgeting. A part of the Smarter School Spending initiative, the Alliance first met in 2015 and includes a diverse group of districts from across the United States. The annual meeting of the Alliance includes senior staff from academic and finance learning, sharing and networking with their peers from other districts to improve their budgeting and planning processes. Topics covered at the annual meeting will include using GFOA's school budgeting roadmap and self assessment tool, developing strategic finance plans, finance/academic collaboration, and stakeholder engagement.

This session will include topics and speakers over four (4) days and features a mix of presentations, small group discussions, and interactive exercises.

Learning Objectives:

- Network, share, and learn from outside experts and your Alliance peers
- Complete a self-assessment to determine next steps for your district in improving its budget process
- Learn more about the key areas of GFOA's Best Practices in School Budgeting
- Learn tips, advice, and tricks from others working to implement the best practices – and how to deal with pressing issues.
- Gain perspectives on budget process pain points from your academic or finance peers

[Click here] to learn more and to register.

[Note Disclosures and RSI for Pensions and Other Postemployment Benefits (OPEB): GFOA Webinar]

January 19, 2022 | 2 p.m.-4 p.m. ET

Details:

This seminar will provide a comprehensive examination of all pension- and OPEB-related note disclosures and required supplementary information (RSI) that must be presented by governmental employers that provide these benefits to their employees.

Learning Objectives:

Those completing this seminar will be able to:

- Understand general content requirements for note disclosures and RSI by employers that provide

pension and OPEB to their employees
- Understand differences in note disclosures and RSI required of employers that provide pension and OPEB defined benefit and defined contribution arrangements
- Understand differences in note disclosures and RSI required of employers that provide pension and OPEB through single-employer, agent multiple-employer, and cost-sharing multiple-employer plans
- Understand differences in note disclosures and RSI required of employers that provide pension and OPEB via plans administered through trusts or similar arrangements that meet criteria set by the Governmental Accounting Standards Board and for benefits not administered through such arrangements
- Understand the limited disclosure requirements for governments that provide pension or OPEB through plans in which non-governmental employers are the predominant participants

Click here to learn more and to register.

Muni ETFs Grow Fast as Yield-Starved Investors Seek Cheap Funds.

- **Funds see record inflows topping $19 billion this year**
- **Citigroup analysts say ETFs' holdings could climb 40% in 2022**

Exchange-traded funds for municipal bonds are growing so fast that they're giving more established products for retail investors, like closed-end mutual funds, a run for their money.

This year, muni ETFs have seen record inflows, bringing total holdings to $83 billion. That's not far off the $98 billion of assets that muni closed-end funds had at the end of the third quarter.

And the growth isn't over. Citigroup Inc. analysts led by Vikram Rai said in a report this month that muni ETFs could see their holdings jump by another 40% in 2022. The draw for investors is the cheaper management fees, which average around 0.18% for the top funds, about a third of the level for open-end mutual funds, the analysts wrote.

Continue reading.

Bloomberg Markets

By Amanda Albright

December 16, 2021, 8:07 AM PST

Muni Bankers See Texas Fee Bonanza With Schools Racing to Build.

- **Population boom in Texas has schools borrowing to expand**
- **GOP battle with Wall Street threatens lucrative business**

A population boom in Texas is fueling a surge in borrowing by schools that need to expand. On Wall Street, bankers are eager to get their share of more than a quarter of a billion dollars in underwriting fees from bonds financing all that construction.

Texas voters have approved $53 billion of school bonds since 2017, a 50% increase over the previous five years, according to data compiled by the Texas Bond Review Board. Since the sales are typically spread out over time it means years worth of lucrative business. Schools in Texas this year paid banks a fee of about $5.13 for every $1,000 of bonds, meaning there was roughly $272 million at stake.

“The K through 12 market is perhaps the most important segment of the muni market in Texas,” said Ajay Thomas, head of public finance at FHN Financial in Austin.

The borrowing comes as the state’s population grew by about 4 million over the past decade, with roughly 1,000 people moving in every day, lured by low taxes, affordable homes and plentiful jobs. But the borrowing binge comes as Republicans who control the Texas statehouse have clashed with Wall Street over issues such as guns and climate change and threatened to curb municipal-bond underwriting for some of the biggest banks.

Data reported to the Texas Bond Review Board indicates school districts have sold less than half of the bonds approved by voters since 2017, a report published in August shows. That data though is compiled through various sources and likely doesn’t capture all authorized bond sales.

School bonds accounted for more than a quarter of all sales in Texas this year, the largest sector in the state, data compiled by Bloomberg shows. And districts are consistently in the market, often with decently sized deals. While the average sale throughout the municipal market is roughly $50 million, there were more than three-dozen Texas school bond sales of more than $100 million each this year and more than 10 that were larger than $200 million, the data shows.

Large-ticket borrowers like big cities, major airports or the state’s department of transportation, on the other hand, come to market once or twice a year and often rotate their underwriters. That leaves banks a shot at managing just one of those big deals every couple of years.

“That’s not that many bites at the apple,” said Keith Richard, head of the Texas region at Siebert Williams Shank & Co. “Two hundred million is a large deal; everyone wants to do a deal like that and there are way more of those deals in K-12 than there are anywhere else.”

The explosive population boom has forced districts, particularly those in the suburbs of the major metro-areas of Austin, Dallas, Houston and San Antonio, to expand and build new schools. Public school enrollment in Texas has grown by about 11% in the last decade, according to the National Center for Education Statistics projection data. In New York, that number fell by about 1%, the data shows.

The Texas school bond industry is very much a handshake business where long-standing relationships are imperative. That has Wall Street shops in Texas recruiting school officials to help open doors. The Texas public finance groups at Robert W. Baird & Co Inc, Raymond James Financial Inc, and Piper Sandler, among others, all have former school financial officers or superintendents on their payrolls.

“When I was on the other side of the table, I didn’t do business with people I didn’t have complete trust in,” said Steve Fortenberry, a vice president at RBC Capital Markets, who spent the first three decades of his career working in school administration as the chief financial officer for districts in Plano, McKinney and Fort Worth.

The Fort Worth Independent School District asked voters to approve a $1.2 billion ballot measure in November, the largest proposition anywhere on election day. The measure, which will finance a new elementary school to ease overcrowding and pay for major renovations to existing facilities, passed by 57 votes.

There were 223 school bond measures on the ballot in Texas in May and November, 145 of which passed, totaling about $11.7 billion. Still, in November just over half of propositions failed — signaling that voters weren't universally willing to open up their wallets. That has district officials worrying about missing out on borrowing rates hovering near record lows.

"Any future bond market may not be as advantageous," said Elaine Cogburn, chief financial officer of the Leander Independent School District outside of Austin, which saw voters in November reject two of three bond measures worth nearly $740 million.

Meanwhile, muni bankers across Texas are working their connections with district officials to get a shot at the billions worth of bonds that voters have authorized but haven't yet been issued.

"I'll just keep knitting the blanket, calling on people and forging those relationships," said RBC's Fortenberry. "The market-share and the growth are going to follow."

Bloomberg Markets

Danielle Moran

December 17, 2021

— With assistance by Nic Querolo

[Connecticut Pension-Debt Paydown Boosts Bonds, CreditSights Says.]

- **State may plow $6.3 billion surplus into pensions through 2026**
- **CreditSights anticipates tax revenue will continue to grow**

Connecticut's general obligation bonds are poised to outperform the broader municipal-debt market as surging tax revenue allows the state to chip away at its $41 billion public pension debt, CreditSights Inc. said.

The firm revised its rating on the state's general obligations to market outperform from market perform before the state's $800 million bond issue set to price Tuesday.

Connecticut has transferred almost $1.7 billion in surplus cash into its underfunded state employee and teachers' pension funds in the last two years and it may plow an extra $6.3 billion into the retirement system over the next five years, according to bond offering documents.

"The credit concern people have had with Connecticut is the pension and the size of the liability, and that's kept their rating low," said John Ceffalio, senior municipal credit analyst at CreditSights. "To make that extra contribution over and above what the actuaries are requiring is meaningful."

Connecticut's rainy-day fund is projected to grow to about $5 billion at the end of the fiscal year in June, enough to cover almost a quarter of general-fund spending, and the state received $2.8 billion under the American Rescue Plan.

Surging stocks and Wall Street profits have boosted capital-gains-tax revenue, while sales-tax collections are also rising. Connecticut is also reaping the reward of booming real estate as New

York City residents move to the suburbs amid the pandemic.

Revenue Growth

Overall, state tax revenue grew 12% in fiscal 2021 and is projected to rise 5% this fiscal year, according to CreditSights. The state projects a $900 million budget surplus this year and a $530 million surplus in fiscal 2023.

Growing reserves will help ease the fiscal stress caused by the state's high debt load and retirement costs. In 2017, lawmakers passed a bill requiring the state, which is heavily reliant on Wall Street for income-tax revenue, to stock its rainy-day fund with any capital-gains and bonus taxes that exceed a certain threshold.

State law caps the budget reserve at 15% of spending, with any excess transferred to pensions.

Connecticut's State Employees' Retirement System has a funding ratio of 38.5%, while the teachers' pension is 51% funded. In comparison, the median public-pension funding level was about 73% in fiscal 2020, according to the National Association of State Retirement Administrators.

Governor Ned Lamont, a Democrat, has put Connecticut on a "debt diet" that's slowly paying off. The state's general obligation debt declined to $18.2 billion in 2021 from $18.8 billion in 2020, according to the offering document.

Spread Squeeze

To be sure, there's not much room for its bonds to outperform. The extra yield investors demand for the risk of holding Connecticut debt maturing in 10 years has plummeted to 0.18 percentage point from 1.1 percentage point in May 2020, data compiled by Bloomberg show.

Only Illinois and New Jersey have wider spreads, at 0.58 percentage point and 0.32 percentage point, respectively.

"We could see over the next year, potentially, some upward movement in the ratings or outlook and that should drive spreads a little tighter," Ceffalio said.

Fitch Ratings assigns a AA- rating to Connecticut's general obligation bonds, its fourth-highest investment grade. Moody's Investors Service gives it a comparable Aa3 rating. S&P Global Ratings ranks it one level lower at A+. The companies all have a stable outlook on the bonds.

Bloomberg Markets

ByMartin Z Braun

December 13, 2021, 3:32 PM EST

[MSRB Opens Second Comment Period on Regulation of Solicitor Municipal Advisors: Cadwalader]

The MSRB [requested] a second round of comments on revisions to proposed Rule G-46 ("Duties of Solicitor Municipal Advisors"). If adopted, the amendments would codify previously issued interpretive guidance concerning the requirements applicable to solicitor municipal advisors under

Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") (*see* related coverage).

In response to comments received during the first comment period, the MSRB is revising proposed MSRB Rule G-46 to (i) clarify that solicitor municipal advisors do not owe a fiduciary duty under the Exchange Act to clients in connection with solicitation activities and (ii) conform the rule to certain requirements that apply to non-solicitor municipal advisors and certain solicitations under IAA Rule 206(4)-1 ("Investment Adviser Marketing").

This new comment period will close on March 15, 2022.

December 16 2021

Cadwalader Wickersham & Taft LLP

Momentum Is on the Side of These Municipal Bond ETFs.

Municipal bonds have been a steady bet in 2021 despite all the volatility, with certain exchange traded funds (ETFs) high on momentum according to their relative strength index (RSI).

The RSI can be a helpful indicator to know if momentum is behind a certain ETF — the closer to a reading of 70, the higher the momentum. It can also indicate an oversold condition, so investors need to be aware of potential sell-offs. Likewise, it's not an end-all-be-all when it comes to choosing a momentous fund, but rather a tool that investors can add to their toolboxes.

Fundamentally, municipal bonds have also been a strong bet in 2021. The trillion-dollar infrastructure package and the prospect of higher taxes are also propping up demand for municipal bonds.

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

DECEMBER 20, 2021

Texas Biomed's Inaugural Bond Sale Named "Deal of the Year"

SAN ANTONIO, Dec. 20, 2021 /PRNewswire/ — Texas Biomedical Research Institute's inaugural bond sale has been named the 2021 Deal of the Year by Smith's Research and Gradings, an investment research and analysis company. Smith's annual Municipal All-Star Awards recognizes outstanding municipal bond analysts and investments, based on votes by 1,000 institutional investors.

Texas Biomed's inaugural bond sale has been named the 2021 Deal of the Year by Smith's Research and Gradings.
"Out of all the municipal bond transactions in a given year, the analysts picked our inaugural bond

offering as the deal of the year — that's incredible recognition from the Wall Street community and further validation we are on the right track with our strategic plan," says Bruce Edwards, Executive Vice President and Chief Financial Officer of Texas Biomed.

The municipal bond sale in September 2021 raised a total of $65 million, which helped retire $43 million in short-term bank loans that funded new laboratories and upgrades. It also raised $22 million in new capital, which will support ongoing efforts to expand Texas Biomed's infectious disease research capabilities as part of its 10-year strategic plan.

"I'm really proud of Smith's 2021 Deal of the Year as an example of how municipal bonds are helping build a better future," says Terence Smith, Chairman and CEO of Smith's Research and Gradings, who presented the award in New York City on Dec. 8. "The purpose of municipal bonds is to support our world and our one future together. The transaction is in many ways a perfect use of municipal bonds. The Texas Biomedical Research Institute, funded with muni bonds, specializes in battling infectious diseases like COVID."

Edwards worked with Bank of America and Siebert Williams Shank & Co., LLC on underwriting the bonds, with support from many critical partners. He stressed it was a true team effort to prepare, market and sell the bonds during the COVID-19 pandemic.

Ted O. Matozzo, Director in the Public Finance Investment Banking group at BofA Securities, Inc. was the lead banker on the transaction. "My work allows me to assist many great non-profit organizations to achieve their essential missions through funding in the capital markets," Matozzo says. "The chance to work with Texas Biomed on their inaugural public debt issuance was truly a remarkable opportunity given the tremendous work that they do to improve global health and protect the world from infectious disease."

As part of the process, Texas Biomed had its credit worthiness evaluated for the first time in its 80-year history. The Institute received an investment grade credit rating of Baa1 from Moody's. Still, Edwards was not sure how interested investors would be in Texas Biomed.

"Ultimately, we had more buyers than bonds available," Edwards says.

The bond sale helped Texas Biomed ensure steady financial footing into the future. Rather than having a bank loan with variable interest rates, Texas Biomed can now repay the municipal bonds at a fixed interest rate over 30 years. The bonds also removed collateral obligations that limited the type of investments Texas Biomed could make with endowment funds.

Past winners of Smith's Deal of the Year include the New York Transportation Development Corporation, which issued more than $1.38 billion in special facilities revenue bonds for Delta Airlines to redevelop terminals at LaGuardia Airport.

"This is a fantastic honor for our brilliant financial team and underscores how the broader community believes in our role and ability to eradicate the threat of infectious diseases here at home and around the world," says Texas Biomed President/CEO Larry Schlesinger, MD. "They are investing in us and the future of human health."

By Texas Biomedical Research Institute

Dec 20, 2021

Orrick Webinar: Financing Affordable Housing with 501(c)(3) Bonds - Replay Available

Webinar | December 14.2021 | 11am – 12pm (Pacific Standard Time)

In a market where volume cap is becoming less available, 501(c)(3) entities provide an alternative means of accessing capital to provide affordable housing. This webinar will be a discussion of the different ways 501(c)(3) entities can be used, including accessing capital directly in the corporate market, accessing the tax-exempt market, or providing bridge financing until volume cap is available in a jurisdiction.

Webinar – Recording Available

Atlanta Marketed Bonds with Poison Pill for Buckhead Prior to Council Approval.

Atlanta went to market with about $188 million in bonds with terms of a poison pill for the Buckhead City effort the day before the Atlanta City Council met Wednesday to consider the defensive maneuver.

The bonds were presented to investors Tuesday. On Wednesday afternoon, hours after the council met to consider the poison pill, Atlanta sold about $145 million in bonds, according to records provided by an affiliate of the Municipal Securities Rulemaking Board. The remainder was sold Thursday. Bonds were sold in various denominations

Atlanta Mayor Keisha Lance Bottoms' administration approved the presentation of the bonds to investors on Tuesday. The council's meeting Wednesday was for the express purpose of considering changes to the terms of the bonds that authorized a poison pill. It is intended to establish financial consequences, likely in the tens of millions of dollars, for parts of Atlanta that deannex, according to the legislation. The council voted around noon Wednesday to include the poison pill.

Mayor-elect and current Councilmember Andre Dickens did not attend the virtual City Council meeting, according to a record of attendance. Bottoms supported Dickens in his mayoral campaign.

The poison pill, according to the legislation, "is in the best financial interests of the City… in the event that the General Assembly of the State enacts a Deannexation Act…" The deannexation refers to the Buckhead cityhood effort.

If enacted, the provision would require Buckhead City to pay Atlanta its share of a debt — up to $198 million — in a lump sum a year after the new city is formed, according to terms outlined in the legislation. The amount of payment is to be determined if and when Buckhead City is established. The City Council would have to vote to call the debt, under the terms of the "extraordinary optional redemption" provision.

Council Finance Committee Chair Jennifer Ide said during the meeting she had been unaware of the poison pill. Ide said several councilmembers were unaware of the poison pill language prior to reading about it in a story posted Tuesday in SaportaReport. Ide did not seek reelection to serve a second term on council.

Ide had initiated the move for the paper to be considered Wednesday, rather than as scheduled at the council's Dec. 6 meeting. Ide made the motion Dec. 6 to hold the paper for the special-call meeting Wednesday. The council voted unanimously in favor. The paper had been portrayed as a routine modification of legislation passed in October to refinance up to $198 million in debt.

Trades were being processed even as the council met to consider the terms of the sale.

One example is a sale of bonds for a total of $23.1 million sold Wednesday, in full, between 4:31 p.m. and 4:40 p.m., records show. The settlement date is Dec. 23, an important date because buyers have until then to terminate the deal if the City Council changes the terms of the bond by eliminating the poison pill.

Atlanta CFO Mohamed Balla told the council during its meeting Wednesday that buyers have the option to terminate their purchases if terms were changed. Doug Selby, a veteran bond and underwriters' counsel with Hunton Andrews Kurth, LLP, concurred.

The council approved the poison pill by a vote of 11-1. Buckhead-area Councilmember Howard Shook cast the dissenting vote. Shook made a motion to remove the poison pill provision. It failed.

The poison pill vanishes if Buckhead voters reject the deannexation proposal, according to the legislation. Following a description of steps by which Atlanta can provide for the money to be collected, the terms empower voters to make it all go away.

"Notwithstanding the foregoing, in the event that the referendum question in favor of deannexation shall fail such fees, taxes, or assessments shall automatically and without further legislative action be reduced to 0.00 mills," the provision reads.

A mill is a $1 tax on every $1,000 of assessed property value. The general obligation bonds to be refinanced are exempt from federal taxes and serviced with property taxes collected in the city, according to the legislation.

Saporta Report

By David Pendered

December 16, 2021

- SEC Outlines Key Considerations for LIBOR-Linked Muni Securities.
- SEC Staff Issues Key Considerations on LIBOR Transition: Latham & Watkins
- Hawkins Advisory: Infrastructure Investment and Jobs Act
- MSRB Requests Information on ESG Practices: Cadwalader
- SEC Charges Adviser with Section 204A Violation for Failing to Maintain MNPI Procedures: Paul Hastings Ed. Note: This one is applicable only to those of you advising financial institutions.
- Pre-Order the New Electronic GAAFR.
- *Tos v. State* – Court of Appeal holds that statute clarifying that corridor or usable segment thereof was "suitable and ready for high-speed train operation," for purposes of funding plan required by Safe, Reliable High-Speed Train Bond Act, when bond proceeds were to be used for capital cost for project that would enable high-speed trains to operate immediately or after additional planned investments were made on corridor or useable segment thereof and passenger train service

providers would benefit from project in near-term, was consistent with single object of Bond Act approved by voters, and thus did not violate state constitution's debt limit provision; statute furthered construction of high-speed rail system by funding investments in improvement of existing train systems that would be shared with high-speed train system.
- And finally, Revenge of the Mailbox, Part Deux is brought to us this week by *Snay v. Burr*, in which *yet another* life was tragically cut short by a mailbox. As the Supreme Court of Ohio noted, "The facts of this case are undisputedly tragic." (Are they, though? Undisputedly tragic, yet just a teensy bit hilarious? Imagine the eulogy…) Although this strikes us as a new and terrifying phenomenon, we are reminded that the Bhagavad Gita (suck it, Oppenheimer) contains the immortal warning, "Now I am become Mailbox, Destroyer of Worlds."

BALLOT INITIATIVE - SOUTH DAKOTA

Thom v. Barnett

Supreme Court of South Dakota - November 24, 2021 - N.W.2d - 2021 WL 5501582 - 2021 S.D. 65

County sheriff and superintendent of South Dakota Highway Patrol filed statutory election contest and separate declaratory judgment action against Secretary of State, claiming amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use was presented to voters in violation of requirements for amendments to Constitution.

Proponents of amendment intervened. The Circuit Court dismissed election contest, but determined amendment was submitted to voters in violation of Constitution. All parties appealed.

The Supreme Court held that:

- Circuit Court properly dismissed election contest;
- Sheriff and superintendent did not have standing in their official capacities to bring declaratory judgment action; but
- In matter of first impression, the Governor, through issuance of executive order, ratified declaratory judgment action, thereby curing any standing defects;
- Amendment's submission to voters violated single subject and separate votes requirements of South Dakota Constitution; and
- Provisions of amendment could not be excised under doctrine of separability and, thus, amendment was void in its entirety.

Circuit Court properly dismissed election contest brought by county sheriff and superintendent of South Dakota Highway Patrol, which claimed amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use was presented to voters in violation of requirements for amendments to Constitution, absent showing of any irregularity in election process caused by violation of election law.

County sheriff and superintendent of South Dakota Highway Patrol did not have standing in their official capacities to bring declaratory judgment action, challenging amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use, where neither sheriff nor superintendent sustained any actual or threatened injury as result of amendment; they could suffer no injury by carrying out amendment's mandate, and no violation of duty could be imputed to them by reason of their compliance.

Governor, through issuance of executive order, ratified action brought by county sheriff and superintendent of South Dakota Highway Patrol, seeking declaratory judgment that amendment to South Dakota Constitution to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use was presented to voters in violation of requirements for amendments to Constitution, thereby curing any standing defect in action; order made clear the Governor intended to challenge amendment, she authorized action, desired that it continue, affirmed it in all respects and intended to be bound by result of action, and proponents of amendment would not sustain any prejudice if ratification were permitted.

Amendment to South Dakota Constitution to pass laws regarding hemp, as well as laws ensuring access to marijuana for medical use contained provisions embracing at least three separate subjects each with distinct objects and purposes and, thus, submission of amendment to voters violated single subject and separate votes requirements of South Dakota Constitution; although the stated object or purpose of amendment was legalization and regulation of marijuana, including its recreational, medical and agricultural uses, the amendment included development of comprehensive plan for legalization and regulation of marijuana, a mandate that legislature adopt laws ensuring discrete group of qualifying persons have access to medical marijuana, and a mandate that legislature regulate the cultivation, processing and sale of hemp, requirements that were not dependent upon or connected with each other.

Provisions of amendment to South Dakota Constitution regarding hemp and ensuring access to marijuana for medical use could not be excised, under doctrine of separability, to retain provisions governing development of comprehensive plan for legalization and regulation of marijuana and, thus, amendment was void in its entirety due to violation of Constitution’s single subject and separate votes requirements; Constitution required proponents of amendment to prepare amendment so that different subjects could be voted on separately, and simply severing certain provisions might not reflect actual will of voters.

EMINENT DOMAIN - PENNSYLVANIA

Hughes v. UGI Storage Company

Supreme Court of Pennsylvania - November 29, 2021 - A.3d - 2021 WL 5562689

Landowners, whose property was excluded from certificate of public convenience issued by Federal Energy Regulation Commission (FERC) for buffer zone for underground natural gas storage facilities, brought inverse condemnation action against FERC-regulated interstate natural gas pipeline company alleging deprivation of right to obtain financial benefits from natural gas lying beneath their lands due to prohibition on hydraulic fracturing in buffer zone.

The Court of Common Pleas sustained company’s preliminary objections and dismissed. Landowners appealed. The Commonwealth Court affirmed. Landowners appealed.

The Supreme Court held that a public or quasi-public entity need not possess a property-specific power of eminent domain in order to implicate inverse condemnation principles.

To effect actionable conduct impacting a citizen’s property necessary to support an inverse condemnation claim, it is enough that the condemnor has proceeded by authority of law for a public purpose.

Where governmental power is delegated to an otherwise private corporation, that company may assume a quasi-public status in furtherance of the public interest, for purposes of a de facto condemnation.

A public or quasi-public entity need not possess a property-specific power of eminent domain in order to implicate inverse condemnation principles.

LIABILITY - OHIO

Snay v. Burr

Supreme Court of Ohio - November 24, 2021 - N.E.3d - 2021 WL 5500052 - 2021-Ohio-4113

Motorist filed action against homeowners after single-car accident in which motorist lost control of his vehicle, struck mailboxes, and overturned into ditch, alleging claims for negligence, loss of consortium, and punitive damages.

The Court of Common Pleas granted homeowners' motion for summary judgment. Motorist appealed. The Court of Appeals affirmed. Motorist appealed.

The Supreme Court held that homeowner's mailbox adjacent to public road did not interfere with usual and ordinary course of vehicle travel on road, and thus homeowner did not owe a duty of care to motorist.

Homeowner's mailbox adjacent to public road did not interfere with usual and ordinary course of vehicle travel on road, and thus homeowner did not owe a duty of care to motorist, and was not liable to motorist in negligence action for injuries sustained when motorist hit a patch of black ice, lost control of vehicle, struck mailboxes, and overturned into ditch, even though homeowner's mailbox post was non-conforming to postal guidelines; to the extend mailbox posted a hazard, it did so only with respect to motorists who errantly left the road.

IMMUNITY - OHIO

Maternal Grandmother v. Hamilton County Department of Job and Family Services

Supreme Court of Ohio - November 23, 2021 - N.E.3d - 2021 WL 5456421 - 2021-Ohio-4096

Maternal grandmother brought wrongful death suit and related survivorship claims against child's mother, child's father, county, county commissioners, county department of job and family services, and several caseworkers, arising from death of child while she was in the custody of her parents.

County, commissioners, department, and caseworkers moved for judgment on the pleadings, alleging they were entitled to immunity. The Court of Common Pleas granted motions and dismissed the claims against all defendants except child's parents. Grandmother appealed. The Court of Appeals affirmed. Grandmother sought further review.

The Supreme Court held that:

- Notice pleading applied to claims invoking exception to immunity of government employees for wanton or reckless conduct, and
- Grandmother's allegations were sufficient to plead her claims and raise possibility that exception to immunity applied.

When a complaint invokes the exception to a government employee's immunity for wanton or reckless conduct, notice pleading suffices and the plaintiff may not be held to a heightened pleading standard or expected to plead the factual circumstances surrounding an allegation of wanton or reckless behavior with particularity.

Maternal grandmother's allegations that caseworkers performed their duties in a wanton or reckless manner with respect to child who died when she was two years old and that caseworkers ignored child's mother's history of abusing her other children, failed to properly investigate a report of neglect or abuse of child from doctors, and overlooked what were or should have been clear signs of abuse during a home visit that occurred less than a month before child's death were sufficient to put county and caseworkers on notice of wrongful death and survivorship claims against them and to raise possibility that exception to caseworkers' statutory immunity for wanton or reckless conduct applied.

EMINENT DOMAIN - FEDERAL

Mason v. United States

United States Court of Federal Claims - November 9, 2021 - Fed.Cl. - 2021 WL 5190907

Owners of real property adjacent to rail corridor brought action against United States, asserting that government's authorizing conversion of railroad rights-of-way into recreational trails pursuant to the National Trails System Act resulted in a taking in violation of Fifth Amendment.

Owners filed motion to amend their complaint, seeking to substitute plaintiff.

The Court of Federal Claims held that proposed amendment, seeking to substitute tenants in common, care of individual with 30.1% of ownership in the tenancy in common, as owner of certain parcel would be allowed.

Proposed amendment to property owners' complaint, asserting that government's authorizing conversion of railroad rights-of-way into recreational trails resulted in a taking in violation of Fifth Amendment, seeking to substitute tenants in common, care of individual with 30.1% of ownership in the tenancy in common, as owner of certain parcel in place of current plaintiff with respect to that parcel would be allowed, since tenants in common were proper party to bring an inverse condemnation claim regarding parcel and owners nonfrivolously alleged that the tenancy in common was duly authorized to do so based on terms of agreement governing the tenancy in common.

BONDS - CALIFORNIA

Tos v. State

Court of Appeal, Third District, California - November 30, 2021 - Cal.Rptr.3d - 2021 WL 5576552

Objectors brought action for declaratory and injunctive relief alleging that statute clarifying when corridor or usable segment thereof was "suitable and ready for high-speed train operation," for purposes of funding plan required by Safe, Reliable High-Speed Train Bond Act, violated state constitution's debt limit provision.

The Superior Court denied plaintiffs' motion for judgment on pleadings and entered stipulated judgment. Objectors appealed.

The Court of Appeal held that statute was consistent with single object of Bond Act approved by voters, and thus did not violate state constitution's debt limit provision.

Statute clarifying that corridor or usable segment thereof was "suitable and ready for high-speed train operation," for purposes of funding plan required by Safe, Reliable High-Speed Train Bond Act, when bond proceeds were to be used for capital cost for project that would enable high-speed trains to operate immediately or after additional planned investments were made on corridor or useable segment thereof and passenger train service providers would benefit from project in near-term, was consistent with single object of Bond Act approved by voters, and thus did not violate state constitution's debt limit provision; statute furthered construction of high-speed rail system by funding investments in improvement of existing train systems that would be shared with high-speed train system.

Municipal Bond Market Outlook: 2022

From serious inflation concerns to the Omicron variant, the fears of the world economy facing more setbacks are very real going into 2022.

The inflation concerns became even more clear recently when Federal Reserve Chair Jerome Powell warned that inflation may persist into 2022 and the central bank is likely to taper its bond-buying program – alluding to the notion that inflation isn't transitory, as most believed throughout 2021. In addition, the 2021 low yield and tight spread environment in the municipal bonds market presented challenges for investors to find attractive returns – which may change coming into 2022 as the interest rates start to rise. We are also likely to see the impacts of the government interventions into 2022, as infrastructure spending starts to take shape for local and state governments.

In this article, we will take a closer look at the trends and forces affecting municipal bond markets going into the year 2022.

Continue reading.

municipalbonds.com

by Jayden Sangha

Dec 08, 2021

S&P U.S. Public Finance 2021 Year In Review: Growth, And Stimulus, Supported Ratings

Key Takeaways

U.S. public finance saw a return to credit stability. Strong economic growth translated to positive revenue performance for most borrowers and expansive federal stimulus had the effect of supporting issuers' finances.

Active management also supported credit quality across all sectors. This will continue to be important as other challenges–many of them also under the environmental, social, and governance (ESG) label–are testing issuers as the frequency and severity of wildfire, hurricane, drought, flooding, and cyber security events accelerate.

As we look ahead to 2022 there are key questions relating to the pandemic and the economy that will matter from a credit standpoint. Will the economic momentum continue? Will new COVID variants undermine confidence and recovery prospects? What will be the lasting implications of the pandemic? How will ESG challenges be met?

Continue reading.

Fitch: Governance, Fiscal Autonomy Insulate U.S. States & Locals from Sovereign Rating

Fitch Ratings-New York-08 December 2021: U.S. state and local governments possess significant autonomy in the U.S. framework, which, according to Fitch Ratings in a new report, limits the federal government's power to affect state and local operations. As a result, most U.S. Public Finance ratings, including all state and local governments, are not explicitly tied to or capped by the U.S. sovereign rating.

"U.S. States are autonomous within the U.S. federal system, and retain the power to make laws covering all matters not pre-empted by the U.S. Constitution, federal statute, or ratified treaties," said Senior Director Karen Krop. "The federal/state relationship stands out from many other sovereign/sub-sovereign relationships globally."

Local governments also have significant, albeit less, autonomy within the U.S. government framework. Elsewhere, most revenue-supported municipal sectors have limited exposure to federal government spending, though not-for-profit healthcare is a notable exception.

The federal government is the largest single payor of healthcare services in the U.S. through Medicare and Medicaid. "With such a large share of providers' revenue streams derived from the government, policy and budgetary considerations can strongly affect revenue and profitability, utilization patterns and employer-based healthcare insurance coverage and financing mechanisms," said Krop.

Nonetheless, Fitch believes that operating within the U.S. economy and legal system is a significant positive rating factor. While not linked or capped at the U.S. rating, public finance ratings are subject to the same macro and structural factors that affect the sovereign rating. Federal policy actions have ramifications for the operating environment of states, local governments, and revenue-supported entities, which over time could influence the risk profile of the sector.

"U.S. Public Finance Ratings and their Relationship to the U.S. Sovereign Rating' is available at www.fitchratings.com.

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Hawkins Advisory: Infrastructure Investment and Jobs Act

The attached Hawkins Advisory describes three provisions included in the Infrastructure Investment and Jobs Act having to do with tax-exempt bonds.

Read the Hawkins Advisory.

Fitch ESG Credit Trends 2022 | Social Issues to Rise in Prominence for ESG Strategies

Investors, regulators and stakeholders in capital markets are paying increasing attention to social issues and this ESG theme will rise in prominence over 2022. In conjunction, the nexus between environmental and social issues will become stronger as ESG integration becomes more sophisticated as more disclosures and data become available. This can manifest in various ways, be it in a greater importance placed on just, or fair, transition issues and the impact of investment strategies have, supply-chain evaluations, or, the issuance of sustainability bonds that encompass social and environmental goals.

Sustainable Fitch's *ESG Credit Trends 2022* identifies and analyses these strengthening interconnections and their impact on credit risks.

DOWNLOAD NOW

Fitch Ratings 2022 Outlook: Community Development and Social Lending

Fitch Ratings views the community development and social lending sector (formerly tax-exempt housing) to be stable with a neutral outlook for 2022. After a globally challenging year in 2020, it was expected that the sector was well positioned financially entering 2021, as the coronavirus pandemic and its impact to many borrowers and renters presented unforeseen circumstances that were deemed to be evolving. State housing finance agencies (HFAs), socially driven lending institutions and developers are expected to continue to successfully navigate an environment of rising barriers for affordable single-family and multifamily housing. In 2021, the sector saw an increase in issuance in lending for affordable housing, from $19 billion in 2020 to $24 billion as of October 2021. This trend is expected to continue in 2022. This increase is significant, as these entities are operating in a single-family lending environment whereby low interest rates are offset by the overvaluation of single-family dwellings and rising rental rates that are outpacing U.S. wage growth. HFAs continued to be well poised to respond to liquidity needs that the challenging environment may present, with their balance sheets and loan programs continuing to increase in overall equity.

ACCESS REPORT

Wed 08 Dec, 2021

Fitch Peer Review of U.S. SRF and MFP Program Sector Highlights Continued Strength.

Fitch Ratings-Austin-09 December 2021: All 26 of the federal state revolving fund (SRF) programs and four other municipal finance pool (MFP) programs monitored by Fitch Ratings are rated ‘AAA’, reflecting the sector’s strong performance. The remaining programs within the sector are rated ‘AA’.

“The high credit quality of the Fitch-rated SRF and MFP programs reflects the robust financial structures and generally sound credit quality of the underlying pool participants,” said Major Parkhurst, Director, U.S. Public Finance.

The overall median program asset strength ratio, an asset to liability ratio, was 1.9x in 2021, down slightly from 2.1x in the prior year but in-line with historical results. Pool credit quality has shown some incremental improvements over time, as the median percentage of investment-grade obligors has increased form 62% in 2015 to 74% in 2021.

For more information, the full report ‘State Revolving Fund and Municipal Finance Pool Program Peer Review: 2021 is available at www.fitchratings.com.

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[S&P U.S. Not-For-Profit Health Care Rating Actions, November 2021.]

S&P Global Ratings affirmed 22 ratings without revising the outlooks and took 14 rating actions in the U.S. not-for-profit health care sector in November 2021. There were 14 new sales in November, including a rating initially assigned to Cedars-Sinai Health System, California. The 14 rating and outlook actions consisted of the following:

- Six upgrades, including two stand-alone hospitals and four health systems;
- Two downgrades, including one stand-alone hospital and one health system;
- Two unfavorable outlook revisions (one to negative from stable and one to stable from positive); and
- Four favorable outlook revisions (three to stable from negative and one to positive from negative).

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. This also incorporates our stable sector view and our assessment of COVID-19, staffing pressures, economic developments, and market volatility.

Continue reading.

[Fitch: Omicron is an Added, but Manageable Risk for NFP Hospitals]

Fitch Ratings-New York/Austin-08 December 2021: The Omicron coronavirus variant, while concerning, should not have an outsized effect on not-for-profit (NFP) hospital operations and cash flows, says Fitch Ratings. Coronavirus-related hospitalizations in the US have been increasing since Nov. 14, due in large part to a current surge of the Delta variant, and the Omicron variant may add to that trend, particularly among the unvaccinated. Early data shows Omicron is highly transmissible, so it could become a common strain of the coronavirus but so far there is not a corresponding surge of severe illness or hospitalizations.

There are still many unknowns about Omicron and it could be weeks at the earliest before vaccine effectiveness against the variant and its severity can be discerned. The World Health Organization (WHO) designated Omicron as a variant of concern. Omicron's transmissibility is likely to result in a greater number of cases, particularly if it is better at evading immune responses. The general consensus is that vaccines will still provide some form of protection but it is not yet certain if hospitalizations could increase among the unvaccinated.

Nevertheless, hospitals are preparing for another winter coronavirus surge of the Delta variant, with some hospitals in regions that are currently seeing a spike in cases already stretched thin. US coronavirus hospitalizations are up 17% in the last 14 days with more than 58,000 people hospitalized daily per US Health and Human Services (HHS) data.

Hospitals are remaining vigilant in the midst of an evolving situation but continue to be pressured by a shortage of healthcare workers, high turnover, and, in many areas at the moment, high coronavirus infection and hospitalization rates. Hospitals that are already overwhelmed with coronavirus cases have limited capacity to treat additional patients and some have paused higher reimbursement elective procedures as a result. The risk of severe illness among patients with other health issues also increases as care is delayed due to the pandemic.

The lost volume from elective procedures delays revenue growth. Operating margins will also be pressured in the near term, as the surge in new infections is postponing the restoration of normal volumes. Should Omicron not be as mild as generally anticipated at this time, additional coronavirus hospital admissions would result, furthering this negative margin effect.

Lower rated, typically smaller hospitals that have full intensive care units are less able than higher-rated hospitals to absorb a decline in reimbursement, lower elective volumes and an increase in expenses caused by the cost of maintaining sufficient healthcare staff. Healthcare job vacancies are the highest of any industry and average hourly hospital wages continue to rise. Highly-rated hospitals generally have enough financial cushion to manage a decline in revenue and an increase in operating costs, given liquidity remains high. However, this liquidity cushion could decline if there are continued pandemic-related shocks to the healthcare system.

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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: U.S. Water & Sewer Utilities Outlook Neutral in 2022

Fitch Ratings-New York-08 December 2021: U.S. water and sewer utilities remain favorably positioned heading into next year despite the challenges posed by the pandemic, according to Fitch Ratings in its 2022 outlook report.

“Revenue growth is expected to improve from enacted rate increases which will help to offset expense escalation,” said Director Audra Dickinson. “Some increase in sector leverage is expected, but by and large balance sheets remain robust and there is more than sufficient headroom to absorb the additional leverage without the sector facing widespread downward rating pressure.”

Capital spending is expected to continue to increase as utilities look to address deferred maintenance, growth and inflation pressures. Capital programs are also being influenced by new and expected regulatory requirements to address lead pipe removal and other drinking water contaminants. “Federal infrastructure and stimulus legislation will help to meet some of these needs although most funding will continue to be borne by local users,” said Director Allison Clark. “Consequently, affordability will continue to be a topic of focus for industry stakeholders.”

“Fitch Ratings 2022 Outlook: U.S. Water and Sewer Sector” is available at www.fitchratings.com.

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Table Of Contents: S&P Global Ratings Credit Rating Models

An S&P Global Ratings model information document provides a summary description of a Ratings Model (a model that is used in the process of determining a Credit Rating) or a Criteria Model (a complex model that is based on advanced economic, financial, mathematical, or statistical methodologies used in the development of Criteria). A model information document typically includes a summary description of: (i) the model, (ii) assumptions underlying the model, (iii) data used in model development and calibration, and (iv) model limitations. A model information document also includes references to related criteria. Our credit rating models may be global, regional, or local, be specific to an individual industry or subject area, or apply across several industries or subject areas.

Material changes to credit rating models are described within our model information documents, which provide information describing recent material changes to models, where applicable. The publication of an updated model information document to describe material changes to a model typically follows shortly after use of the revised model is approved by S&P Global Ratings. There may be some instances where the description of a material change to a model could potentially reference changes being made by an issuer or a transaction that are confidential until the the issuer or transaction makes those details public. Accordingly, in these instances the publication of updates to a model information document may be timed to ensure that any publication does not communicate confidential information.

This table of contents, which we update continuously as we introduce or enhance models, will direct you to all active model information documents for the groups or instruments listed below. We most recently republished this table of contents on the date shown above.

Continue reading.

S&P U.S. And Canadian Airport Ratings And Outlooks: Current List

View the list.

Infrastructure Law Paves The Way For Transportation GARVEE Bonds' Federal Support And A Stable Sector View: S&P

Key Takeaways

- The Infrastructure Investment and Jobs Act has been signed into law and contains a new five-year surface transportation reauthorization (2022 to 2026) that replaces the previous Fixing America's Surface Transportation (FAST) Act.
- Although the law does not address the Highway Trust Fund's structural deficit, it identifies a transfer between the general fund and the trust fund that should keep this program fully funded for the next five years.
- S&P Global Ratings' view of the federal grant-secured transportation sector is stable, reflecting our expectation of reliability and strong support for transportation infrastructure investment from all levels of government.
- Grant anticipation revenue vehicle programs' debt service coverage could decrease and their leverage increase as states and regional transportation agencies issue more debt to maintain and expand investment in roads and transit; alternatively, debt service coverage could rise if debt remains level or decreases.

Continue reading.

Which States Have Plans for Broadband Funds?

Billions of dollars available to state and local governments might be enough to bring affordable broadband to all Americans. But some states have yet to produce plans for these funds.

The first National Broadband Plan, published in 2010, put forward six goals for the decade ahead. While progress has been made since then, by 2020 most of its long-term targets for affordable, high-speed access had not been achieved. This includes creating the world's fastest wireless networks. As of 2021, the United States is not among the top 10 countries in the world for either mobile or broadband Internet speed.

To change that, the federal government's Infrastructure Investment and Jobs Act includes $65 billion for broadband. It's a start. A Brookings analysis of the American Rescue Plan identifies more than $388 billion for which projects to advance various aspects of digital equity are allowable uses.

The pandemic gave this work new urgency. Disadvantaged Americans who lack affordable, high-speed Internet service suffered from poor access to everything from public health updates and health care to education, social services, jobs, food and family.

Continue reading.

governing.com

December 10, 2021 • Carl Smith

Arizona College's Mega-Borrowing Breaks Bond-Market Ground.

- **Grand Canyon University sells $1.2 billion of junk-rated bonds**
- **It's first college corporate junk-bond deal: Bloomberg data**

A private university in Arizona broke new ground in the fixed-income universe this month with a $1.2 billion debt sale, in the first junk borrowing to hit the corporate-bond market from the higher-education sector.

The sale by Grand Canyon University, a mostly online college in Phoenix that was founded in 1949, stands out among the pristine school credits that typically bring large corporate deals. Those issuers are often top-rated Ivy League names, with endowments in the billions of dollars. Grand Canyon University is rated Ba1 by Moody's Investors Service, one step below investment grade, and according to Bloomberg data, its bond issue is unprecedented.

The sale, which closed Thursday, comes as returns on junk-rated corporate and municipal debt are outpacing the broader U.S. bond market by a wide margin in 2021 as yields remain historically low. Although the debt went through the corporate market and is taxable, it also drew the attention of muni buyers. They were following it for its novelty and extra yield, and also because of their familiarity with higher-ed borrowers, which often sell tax-exempt securities.

Grand Canyon University is one of the nation's largest Christian universities, with over 113,400 students enrolled as of the end of September, according to bond documents. While many are online, the school has grown its Phoenix campus as well. There are over 23,600 in-person students, almost 10 times the number in 2008. Net revenue in fiscal 2021 totaled $1.3 billion.

"The uniqueness of the bond structure is reflected in the uniqueness of the university," Brian Mueller, president of the school, said in an interview.

The school was founded as a nonprofit, but after its finances struggled, a group of investors formed a company and turned it into a for-profit university in 2004, bond documents say. According to the documents, in 2018, it transitioned back to a non-profit, and sold senior secured debt that year to finance the $876.6 million purchase of those assets.

The U.S. Department of Education doesn't recognize the school as a nonprofit. But that doesn't impact the school's ability to attract students, bond documents say. According to Moody's, it's recognized as a nonprofit by the Internal Revenue Service, the Higher Learning Commission — the university's regional accreditor — and the state of Arizona.

The proceeds of this month's sale will be used in part to refinance that 2018 note. Mueller said the move has generated savings, but declined to specify an amount.

Evident Lure

For buyers seeking extra yield and comfortable with the risk, the lure of the deal is evident. A portion that matures in 2028 sold with a 5.125% yield, compared with about 3.5% on a Bloomberg index of similarly rated debt. Seven-year Treasuries yield about 1.45%.

Moody's gives the bonds a stable outlook and says the university benefits from its "clear market niche" of online education. But it also says the school's high debt level compared to its cash and investments weighs on the rating, and added that the competition for online students will intensify over the next decade.

The admission rate for what the school calls traditional students — who take class on campus — was about 80% in fall 2020, when applications climbed to 48,918, from 34,096 in 2016, bond documents show.

Junette West, the vice president of business and finance, said the school conducted about 25 investor calls for the transaction.

"There was quite a bit of interest," she said.

Higher-ed issuers have sold about $4 billion of corporate debt this year, including offerings from the top-rated Massachusetts Institute of Technology as well as Howard University, which is one step above junk. That's a bit above the $3.6 billion average since 2010, data compiled by Bloomberg show.

Last year, with long-term borrowing costs near record lows and the pandemic straining finances, such issuance set a record $11.7 billion.

'Pathbreakers'

That boom, which included sales from well-known issuers, increased corporate investors' comfort with higher-education credits, which benefited Grand Canyon University this month, said John Augustine, who leads higher-ed finance for Barclays Plc, the deal's sole underwriter.

"Those were the pathbreakers for Grand Canyon University," he said in an interview. "People saw the success of those billion-dollar-plus plus higher-ed transactions, both in terms of pandemic needs and refunding needs. That did play to their advantage."

The offering drew interest from investors such as insurers and bond funds, Augustine said in a release from the school.

The university intends to grow in-person enrollment to 40,000 and online enrollment by an average of 5% to 6% per year, bond documents say.

Mueller said the school doesn't have plans to sell debt again to fund that growth. It plans to invest $500 million to expand its campus, financed from cash, he said. He said he expects its credit rating to rise to investment grade in the next year or two.

"In the past, small and elite has won the day," he said. "And in the future, it's going to be larger and very flexible."

Bloomberg Markets

By Amanda Albright

December 10, 2021, 5:00 AM PST

— With assistance by Jack Pitcher, Gowri Gurumurthy, and Dan Wilchins

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Do We Really Need States to Be Bankers?

Populists are once again advocating the creation of state-owned banks to overcome private-sector lending market failures. But market innovations hold a lot of promise for accomplishing the same goal.

In 1919, the state of North Dakota established its own bank as a public institution. It's the only one of its kind in the nation, having operated successfully for a full century through the Great Depression and a dozen recessions. Nine other states tried to follow suit in the following decades, only to fail and close their banks' doors. Founded to provide capital in a farm-centric economy that was underserved by large regional financial institutions that charged double-digit interest rates for ag loans, the Bank of North Dakota has served as an inspiration and touchstone to political populists, anti-bank politicians and easy-money advocates.

Over the past decade lawmakers in more than half the states have rekindled legislation in support of public-owned banks, according to the Public Banking Institute, an advocacy organization. The arguments in favor of these bills are similar: The private-sector banking industry underserves low-income communities, minorities and women; banks only lend to people who don't need the money; bank profits are excessive, so states need to establish a competitive yardstick; public banks can promote economic development opportunities that the private sector ignores; and state banks could make money on their investments and deposits — a win-win for taxpayers. Never mind that today money is cheap and the banking system is flooded with excess reserves.

Continue reading.

governing.com

December 7, 2021 • Girard Miller

New Research: Entrepreneurial Thinking in Local Government

Local governments have opportunities to pursue entrepreneurial activities that take advantage of the assets they have to create more value for the community and financially strengthen the local government. Innovation, along with efficient execution of the idea to create new value for the public, is what we refer to as entrepreneurialism in local government. In this paper, we will illustrate entrepreneurial thinking using the City of Lancaster, California. Lancaster. We show how the city recognized it could parlay its existing assets (physical or otherwise) to create new revenue for the city and value for the public. The lessons from Lancaster's experience are applicable to all local governments.

LEARN MORE

Joint Trades Letter in Support of H.R. 4616, the Adjustable Interest Rate (LIBOR) Act.

SUMMARY

SIFMA in a joint letter with other associations, provided comments to the House of Representatives on the passage of H.R. 4616, the "Adjustable Interest Rate (LIBOR) Act," to address "tough legacy" contracts that currently reference LIBOR.

SIFMA signed with the following:

Structured Finance Association (SFA)
Bank Policy Institute
National Association of Corporate Treasurers
Education Finance Council
The Loan Syndications and Trading Association (LSTA)
The International Swaps and Derivatives Association (ISDA)
The Real Estate Roundtable
The Financial Services Forum
Institute of International Bankers
Government Finance Officers Association
Mortgage Bankers Association
Commercial Real Estate Finance Council (CREFC)
Consumer Bankers Association
Investment Company Institute
Institute for Portfolio Alternatives
Independent Community Bankers of America
U.S. Chamber of Commerce, Center for Capital Markets Competitiveness
Housing Policy Council
Student Loan Servicing Alliance
American Bankers Association
The American Council of Life Insurers (ACLI)

SEC Outlines Key Considerations for LIBOR-Linked Muni Securities.

A Securities and Exchange Commission staff statement issued Tuesday reiterates disclosure and fiduciary obligations of issuers and underwriters in light of the forthcoming transition away from Libor. And while those obligations are important, some municipal industry practitioners point to an already existing trend away from Libor-linked transactions.

Earlier this year, Libor's regulator, the Financial Conduct Authority, announced that it will cease the publication of 1-week and 2-month U.S. dollar Libor after Dec. 31, 2021. Remaining U.S. dollar

Libors will cease in 2023.

The SEC staff statement “seems to be a restatement of existing obligations and requirements that apply to broker dealers and underwriters, both with respect to their issuer clients and their investor customers,” said Michael Decker, senior vice president for research and public policy at Bond Dealers of America.

Decker points out that the statement “really focuses on ensuring that both sides of the transaction understand the risks associated with being involved in a Libor transaction, given that it appears Libor is going away pretty soon.”

According to the staff statement, “understanding the potential risks, rewards, and costs is especially important when recommending Libor-linked securities.”

The statement also highlights specific considerations for underwriters of primary offerings of municipal securities and those for broker-dealers making recommendations of municipal securities.

For example, SEC staff believe that it would be difficult for a broker-dealer to satisfy its duty of care to customers in a situation where the broker-dealer recommends a Libor-linked security without fallback language.

Fallback language specifies a process for identifying a replacement rate in the event that a benchmark rate is not available.

Essentially, the SEC sees the replacement rate for a Libor-linked security as a factor that generally should be considered as part of a recommendation.

Decker said that while fallback provisions were originally conceived for temporary instances where the Libor wouldn’t be published for a short period of time, the provisions have now become more robust.

“They account for the notion that Libor may go away entirely and specify a more practical and workable kind of long-term solution,” Decker said.

For example, Decker pointed out that instead of merely specifying the prime rate for some period of time, a Libor-transition fallback provision would specify the SIFMA index or some alternative index that the issuer and other parties to the transaction could use.

Regarding municipal securities underwriting, the SEC staff statement pointed to prior SEC staff guidance and guidance from the Municipal Securities Rulemaking Board concerning fair dealing requirements under MSRB Rule G-17.

The Office of Municipal Securities staff noted that “broker-dealers should consider the impact that the Libor transition may have in connection with other duties” including suitability standards in MSRB Rule G19 and disclosure rules under MSRB Rule G-47.

The SEC staff statement also reminds funds and advisors to monitor and manage conflicts of interest associated with the Libor transition.

Les Jacobowitz, a partner at Arent Fox, LLP who has extensive experience representing issuers, borrowers, underwriters, and financial institutions, has been writing about the Libor transition for a couple of years.

"As the UK FCA and U.S. regulators admonish, everyone should act now to slowUSD LIBOR use for the next four weeks through the year-end Libor/SOFR [Secured Overnight Financing Rate] transition deadline," Jacobowitz wrote Dec. 1.

Jacobowitz also noted that slowing of Libor use was "a recommendation and not a requirement."

However, with a nod to the classic movie, Casablanca, Jacobowitz says he is, "shocked, shocked" that Libor-linked instruments are still being recommended by underwriters and financial advisors.

"I can't believe issuers and conduit borrowers are still entering into Libor-based instruments, especially those that terminate after USD LIBOR goes away [in June 2023]," Jacobowitz explained.

Meanwhile, with respect to both interest rate swaps and floating rate notes, Decker is seeing notable movement away from Libor.

"There may be some new transactions that are still priced off of Libor, but it's my understanding that those are becoming rarer and rarer," Decker said.

Overall, Decker believes that underwriters, municipal advisors, and sales reps should be clear in their disclosure with customers and clients about Libor going away and about specifics of a transaction.

"In that sense, we agree with the SEC that disclosure and transparency are important," Decker said.

The Bond Buyer

By Kelley R. Taylor

December 08, 2021, 1:06 p.m. EST

SEC Staff Statement on LIBOR Transition - Key Considerations for Market Participants.

Read the SEC Staff Statement.

Staff of the U.S. Securities and Exchange Commission

Dec. 7, 2021

How Governments Can Minimize Harassment of Public Officials.

Complex factors are at play, including polarization, misinformation and social media. But there are safety measures localities can take to protect local leaders, according to the National League of Cities.

Recently, U.S. residents have increasingly resorted to anger, abuse and violence rather than discussing their problems and expressing differences accelerated by the Covid-19 pandemic, according to a report by the National League of Cities.

What should have been a moment of unity to fight against a global pandemic has devolved into a divide over getting vaccinated, wearing facemasks and police enforcement, the report says.

Rather than embracing those with opposing viewpoints, most of society views one another as enemies.

Root Causes of the Problem

The decline in civility and growth of harassment, threats and violence against public officials has been underway for decades, according to the report. There is a complex network of influential factors at play including polarization, the spread of misinformation and social media.

The inability to see those with different views as people has led to a rapid decline in civility, the NLC says.

Since the 2016 election, U.S. residents are more likely to actively endorse the idea of intergroup violence — aggressive behavior committed by one group against another intending to cause physical and/or psychological harm, according to the report.

However, this is not the first time the U.S. has experienced a surge in polarization. For example, in response to the 1960s civil rights movement and 1970s women's rights movement, polarization grew around changing group status.

What Local Governments Can Do

Cities should work with their police departments to develop emergency strategies and improve intervention training for security officers in case an incident arises, the report states.

In the event of harassment, threats or violence, cities must be quick in evaluating and improving public safety measures to prevent violence against local officials and ensure the safety of their staff, the report also says.

To ensure safety, several cities have increased security presence at council meetings, installed metal detectors at entrances and installed ballistic glass in their city halls to protect local leaders from harm, according to the NLC.

Recommendations for Lessening Incidents

Here are recommendations that outline safety measures local leaders can take to address incidences of harassment, threats and violence, according to the report:

- **Plan and focus on de-escalation:** Improve training for police and security offices focused on de-escalation.
- **Add security measures:** Consider having local law enforcement or security present at council meetings and public city events.
- **Make infrastructure adjustments:** Consider making changes to meeting spaces to keep public officials and municipal staff safe.
- **Conduct debriefings:** Following meetings, make sure that relevant stakeholders engage in conversations.
- **Prioritize mental health:** Connect staff to mental health professionals and resources for individual treatment emphasizing the importance of prioritizing mental health and confidentiality of treatment.
- **Develop guidelines:** Develop a social media guideline or code of conduct for public officials to

limit the spread of vitriolic language online and combat the spread of misinformation.

ROUTE FIFTY

By Andre Claudio

DECEMBER 9, 2021

SEC Staff Issues Key Considerations on LIBOR Transition: Latham & Watkins

As a major LIBOR transition milestone approaches, a Staff Statement provides key considerations for market participants regarding their obligations.

On December 7, 2021, the Staff of the Securities and Exchange Commission (SEC) issued a statement (the Statement) on the transition away from the London Interbank Offered Rate (LIBOR). The transition away from LIBOR is reaching an inflection point as the publication of the USD LIBOR benchmark for the 1-week and 2-month USD LIBOR maturities and many non-USD LIBOR maturities cease immediately after December 31, 2021.[1] The SEC, like other regulators around the world, continues to emphasize its expectation that market participants understand the risks associated with LIBOR transition and take appropriate action to move to alternative rates in a manner that protects customers, counterparties, the firm itself, and the capital markets more broadly.

The Statement provides guidance for broker-dealers and registered investment advisers as they approach the imminent transition away from LIBOR, highlighting as part of conduct risk their duties under Regulation Best Interest (Reg. BI) as well as fiduciary obligations under the US securities laws. Specifically, the Statement includes timely reminders for:

- Broker-dealers recommending LIBOR-linked securities
- Broker-dealers underwriting or recommending municipal securities
- Investment advisers recommending LIBOR-linked securities
- Funds and investment advisers investing in LIBOR-linked securities
- Companies and issuers of asset-backed securities making disclosures related to the LIBOR transition

Obligations for Broker-Dealers Under Reg. BI

According to the Statement, broker-dealers should be mindful of their obligations under Reg. BI when recommending LIBOR-linked securities to retail customers. Under Reg. BI's Duty of Care, "a broker-dealer must exercise reasonable diligence, care, and skill to, among other things, understand the potential risks, rewards, and costs associated with the recommendation."

In the Statement, SEC Staff emphasized that based on a fact-specific analysis broker-dealers must have a reasonable basis to believe that any recommendation they make involving LIBOR-linked securities is in their retail customers' best interests. According to SEC Staff, "reasonable diligence" may take into account client investment objectives, as well as the characteristics of the underlying securities such as complexity, risks, rewards, costs, liquidity, volatility, likely performance, expected return, associated incentives, etc.

The Statement clarifies that, to meet the Reg. BI Standard, broker-dealers must confirm whether a security has robust fallback language in its offering documents that clearly defines an alternative reference rate (ARR) to LIBOR. If a security does not have robust fallback language, then the recommendation must be “premised on a specific, identified, short-term trading objective.” In contrast, if a security does have robust fallback language, the broker-dealer must assess the impact the replacement rate will have on the expected performance of the security to determine whether the security is still in the customer’s best interest.

Furthermore, under Reg. BI, broker-dealers that have agreed to perform monitoring services for a retail customer must reassess the potential risks, rewards, and costs of any LIBOR-linked security in their retail customer’s account to ensure the investment is still in the customer’s best interests. This obligation applies to buy, sell, or hold recommendations, and even when a broker-dealer remains silent (i.e., an implicit hold recommendation).

Obligations for Broker-Dealers Related to Municipal Securities

In addition to the Reg. BI standard for recommendations to retail customers, broker-dealers are subject to a few additional rules when recommending LIBOR-linked municipal securities.

1. Exchange Act Rule 15c2-12 requires broker-dealers to obtain and review a “deemed final” official statement by a municipal obligor. Per this rule, underwriters must have a reasonable basis to believe the key representations in the “deemed final” official statement are true. To meet this “reasonable basis” standard, broker-dealers underwriting municipal securities should review the municipal obligor’s exposure to LIBOR-transition risks to ensure those risks are adequately addressed in the obligor’s key representations.
2. Broker-dealers making recommendations to non-retail customers are subject to the suitability standard in MSRB Rule G-19. Accordingly, broker-dealers should consider a municipal obligor’s exposure to LIBOR transition risks when making a suitability determination.
3. When broker-dealers sell or purchase municipal securities, MSRB Rule G-47 requires they disclose material information known or available to established industry sources regarding the municipal obligor’s exposure to LIBOR transition risks.

Obligations for Registered Investment Advisers and Registered Funds

SEC-registered investment advisers must consider their fiduciary obligations under the Investment Advisers Act of 1940 when recommending LIBOR-linked securities and investment strategies. These fiduciary principles require advisers to consider whether LIBOR-linked investments are consistent with their client’s goals. To do this, advisers must consider whether the investments or related contracts have robust fallback language providing a clear ARR. When an investment does include an ARR, advisers should consider whether those rates will cause the investment to depart from their client’s goals or risk tolerance.

Funds and advisers should monitor and manage conflicts arising from the LIBOR transition. Specifically, advisers should make disclosures when the LIBOR transition impacts performance fees, which is likely for performance fees subject to a “hurdle rate” (the minimum return necessary for the adviser to start collecting the performance fee) that is tied to LIBOR.

LIBOR transition also implicates disclosure obligations for registered investment companies and business development companies to prevent misleading investors. Disclosures in offering documents for registered products must address the principal risks associated with the fund, including those related to the anticipated impact of LIBOR transition, if a fund invests a significant portion of its assets in LIBOR-linked investments.

Funds and advisers should also consider the impact the transition will have on valuation measurements that use LIBOR as an input, as well as the operational complexities that the LIBOR transition will introduce on their IT systems.

Obligations for Public Companies and Asset-Backed Securities Issuers

According to the Statement, public companies and asset-backed securities issuers should provide meaningful insight to investors about the status of their efforts to address LIBOR transition risks. Specifically, companies should provide material and specific qualitative and quantitative information to investors, "rather than general statements about the progress of the company's transition efforts to date." To aid these disclosure requirements, the Statement outlines several specific disclosure recommendations:

- Companies should generally disclose the steps they have taken to identify their LIBOR exposure, what the company has done thus far to mitigate LIBOR transition risks, and what steps remain to mitigate those risks.
- Companies with outstanding debt that lacks robust fallback provisions should disclose how much LIBOR-linked debt they will have outstanding after the cession date and the steps the company is taking to mitigate the risks involved.
- Companies that include disclosures about the LIBOR transition in response to more than one disclosure requirement within a single filing should provide cross-references or otherwise connect the information to clarify for the investor the company's LIBOR risk profile.
- Firms specifically subject to regulatory guidance (such as the joint statements issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; and the Federal Reserve Board backed Alternative Reference Rates Committee) recommending that they avoid entering into new contracts that reference LIBOR after December 31, 2021, should disclose the details of their transition efforts and the impact of these efforts on their company, in alignment with such guidance.

Key Takeaways

The Statement's recommendations will be of particular interest to firms and individuals under the SEC's remit, as they may be indicative of the Staff's key regulatory and examination priorities. Since at least June 18, 2020, the SEC's Division of Examinations has highlighted that LIBOR transition is a priority, including when it issued a Risk Alert on LIBOR transition preparedness (see this Latham post for more information). As the long-anticipated deadline for key LIBOR tenors approaches, regulated firms should be alert to their various disclosure obligations and obligations under the fiduciary rules and Reg. BI. Firms should prepare for compliance with these rules, specifically as they relate to LIBOR transition.

Latham & Watkins LLP – Laura N. Ferrell, Marlon Q. Paz, Zach Lippman and Deric M. Behar

December 10 2021

Understanding General Obligation Municipal Bonds.

Given all the municipal bonds to choose from, how do you decide which ones should make up the core of your portfolio? With $3.9 trillion of muni debt outstanding1 spread among tens of thousands of issuers, the choice may seem daunting, but we'll help you break it down.

Municipal bonds are sold by local and state governments to help fund public projects or municipal government operations, like building new schools or repairing city sewer systems. Their interest payments are usually exempt from federal income taxes, and may be exempt from state income taxes if the bond issuer is located in the investor's home state. For these reasons munis are often attractive to income-oriented investors in higher tax brackets looking to reduce income tax bills.

Munis can generally be classified into two camps—general obligation bonds and revenue bonds. General obligation, or GO, bonds are often backed by the general revenue of the issuing municipality, while revenue bonds are supported by a specific revenue source, such as revenue from a toll road.

Continue reading.

Advisor Perspectives

by Cooper Howard of Charles Schwab, 12/10/21

Impact Investing: Addressing Local Needs with Precision and Purpose

Impact investing, which seeks to make a direct—and measurable—social or environmental impact while generating a financial return, has historically been synonymous with the private debt and equity markets. But that ignores the hugely important public market of municipal finance.

Impact investing and municipal bond investing are a natural fit. Municipalities are uniquely positioned and responsible for building and supporting the physical infrastructure and public goods that better enable all citizens to participate in an inclusive economy. In turn, investors can put muscle behind the political and civic will to make a difference.

The opportunities to fund positive change are deep and broad within state and local governments. But muni impact doesn't need to cast a wide net to make a big difference. In fact, it does its best work in smaller spaces at a grassroots level.

Take America's aging public schools. In thousands of school systems nationwide, facilities are, on average, 70 to 100 years old. These aren't historical landmarks. They're just old buildings suffering from a half century or more of underfunded maintenance and deferred repairs. These inadequate and sometimes dangerous facilities are concentrated in communities of low socioeconomic status, where they have both direct and indirect effects on student achievement. Impact investors can help correct this inequity by injecting modern facilities and resources directly into school systems. Evidence points to significant long-term benefits to student outcomes from improving infrastructure through capital infusion.

The Dallas Independent School District (ISD) is doing exactly this by issuing a bond to fund its efforts toward educational equity. Families in underserved communities in this district lack sufficient access to mental and physical healthcare, after-school programs, job training, healthy food and safer infrastructure. To help close this gap, Dallas ISD plans to locate four student and family resource centers in neighborhoods that have been disproportionately affected by a history of disinvestment, marginalization, segregation, redlining and other inequities. The planning team is currently deliberating the physical layout of the facilities, which are now mandated by the voter-approved bond.

Health is another area where municipal finance can bridge gaps. In Boston, for example, the wealthy

Back Bay community has an average life expectancy of 90 years. Yet, just two miles away in the predominantly poor neighborhood of Roxbury, the average life expectancy is just 60 years—a 30-year "death gap."

Much of this gap can be attributed to a grim cycle of socioeconomic instability. From 2016 through 2019, Boston Medical Center enrolled 78 Boston families experiencing housing instability and defined as "medically complex" in a study to determine if the coordination of services addressing housing, financial, legal, social and health needs would lead to improved physical and mental health. The conclusion was clear. In the first six months of the study, not only did parental mental health improve, but also the share of children with fair or poor health fell by 32 percentage points.

Boston Medical Center—a safety-net hospital for which 70% of patients are from underserved areas, including Roxbury—understands the need to address the cycle of instability to improve community health. The hospital is taking measurable steps to reduce the disparity between wealthy and poor communities through population health management that extends beyond simply providing medical care. By supporting institutions such as Boston Medical Center, municipal impact investors can help achieve health equity in historically underresourced communities.

Access to clean water is also a risk for many communities throughout the United States. Dated and potentially toxic lead service lines are still used in far too many systems, the vast majority being low-income communities of color. As the lines corrode, lead leaches directly into each home's tap. Children are at a particularly high risk of cognitive delays, as no amount of lead exposure is safe. Municipal impact investing can directly address this environmental justice issue.

In Newark, New Jersey, residents were endangered by these very conditions beginning in 2015, when a corrosion control system began to fail. To effectively and efficiently address the situation, the Essex County Improvement Authority issued municipal bonds to mandate the replacement of 18,000 lead residential service lines throughout the city. So far, nearly 21,000 lines have been swapped out, marking a clear beginning of the end to lead-contaminated drinking water for the city.

These are some of many examples of how municipal impact investing can measurably improve quality of life for historically marginalized and excluded communities.

Global economies will need to galvanize more than US$100 trillion to address climate and social justice challenges in the years ahead. A spectrum of responsible investing strategies—including ESG integration and sustainable investing—will be foundational to helping in these areas. But for municipal bond investors, impact investing may deliver the biggest bang—and one a lot closer to home.

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

Advisor Perspectives

by Marc Uy, Larry Bellinger, Matthew Norton, Erin Bigley of AllianceBernstein

12/6/21

Municipal Bonds Are Going Green, and Investors Can Benefit.

The green bond market is booming — issuance this year will be more than triple what was seen in 2017 — and that's putting a spotlight on exchange traded funds, namely the VanEck Vectors Green Bond ETF (NYSEArca: GRNB).

Something to note about green bonds is that this form of debt can be issued by both companies and governments. To the latter point, the market for green municipal debt is in the early innings of growth, pointing to potential with the VanEck HIP Sustainable Muni ETF (SMI).

The actively managed SMI debuted in September and "seeks current income generally exempt from federal income tax by investing in investment grade municipal debt securities that have been issued to fund operations or projects that support or advance sustainable development, as well as promote positive social and environmental outcomes," according to VanEck.

The HIP Investments methodology that serves as the foundation for SMI is relevant at a time when there are increasing questions regarding environmental, social, and governance (ESG) scoring, particularly when it comes to fixed income.

"HIP Investor's Ratings look deeper into actual results for citizens, beneficiaries and customers of the entities issuing muni bonds, as well as the use of proceeds in issuances. HIP Ratings grade on a 100 point scale. As muni bonds are typically issued by cities, counties, and states, as well as schools, hospitals, road authorities, energy utilities, and water utilities, the mission of these entities benefits citizens," says HIP Investors founder and CEO Paul Herman.

SMI holds just 36 bonds, a concentrated roster that's indicative of the infancy of green municipal bonds. It's also indicative of HIP Investors' rigorous methodology, which ensures that SMI components are legitimately green.

"The 'HIP' in HIP Investor stands for 'Human Impact + Profit.' The HIP ESG ratings provide investors with impact analysis — and a measure of potential future risk. HIP brings 15 years of experience in rating the impact and ESG of 10,000 corporations globally across 85 countries, and nearly 10 years in rating Munis across 122,000 entities, over the U.S. geography of 3,100 counties and 50 states," adds Herman.

SMI yields nearly 1% with an effective duration of 5.71 years, putting it in intermediate-term territory. Munis from California and New York combine for 57.5% of the new ETF's roster.

"SMI offers investors current income that is generally exempt from federal income tax by investing in investment grade municipal debt securities that have been issued to fund operations that support or advance sustainable development, as well as promote positive social and environmental outcomes," concludes Herman.

ETF TRENDS

by TOM LYDON

DECEMBER 7, 2021

For more news, information, and strategy, visit the *Beyond Basic Beta Channel*.

The opinions and forecasts expressed herein are solely those of Tom Lydon, and may not actually come to pass. Information on this site should not be used or construed as an offer to sell, a solicitation of an offer to buy, or a recommendation for any product.

Historic Decoupling From Treasuries Bodes Well for Munis in 2022.

- **Correlation between markets has weakened since pandemic onset**
- **Suggests munis likely to hold up well if Treasuries decline**

Municipal bonds' correlation with Treasuries has broken down since the onset of the pandemic, a phenomenon that's expected to benefit the $4 trillion state and local debt market in 2022 as Wall Street braces for higher yields.

The historic link between the two asset classes crumbled when the coronavirus outbreak roiled markets early last year. Municipal debt sold off at the time as investors yanked cash out, while Treasuries surged amid a massive flight to safety.

The relationship has recovered since, but munis still aren't following Treasuries the way they used to. The weekly correlation coefficient of the Bloomberg Municipal Bond index to the U.S. Treasury index is about 0.43, compared with around 0.9 before the pandemic struck, and an average of 0.67 since 2000. A reading of 1 means they're moving in lockstep, while -1 would indicate a completely inverse correlation.

The diminished link has key implications for the year ahead. With the Federal Reserve removing policy accommodation and inflation still elevated, the bond market is bracing for higher Treasury yields. Munis, however, may hold up relatively well in comparison, positioning them as a possible hedge.

"Munis are likely to retain a greater amount of their value compared to other asset classes should there be a selloff in Treasuries" in 2022, said Wesly Pate, a portfolio manager at Income Research & Management.

The municipal market is already outperforming in 2021, in part as lawmaker debate lifting taxes on the wealthy. State and local debt has earned 1.4% this year while Treasuries have lost 2.2%, according to Bloomberg indexes.

In Pate's view, the two markets have decoupled because munis' buyer base has gotten "stickier," meaning individual investors are reluctant to sell because of the "embedded gains" in their portfolios. If they sell, they'd have to pay capital-gains taxes and reinvest that money elsewhere — even though other asset classes aren't offering much incremental yield, he said.

He also says institutional buyers like banks and insurance companies have become less of a force in the municipal market after the 2017 tax overhaul cut the corporate tax rate. As a result of that shift, they aren't moving in and out of the market as much, limiting volatility, Pate said.

"The combination of a stickier retail base coupled with large embedded gains is likely to keep turnover low and volatility much more muted compared to other asset classes," he said.

Bloomberg Markets

By Amanda Albright

December 8, 2021, 9:10 AM PST

— With assistance by Claire Ballentine

[Infrastructure Bill Highlights Opportunity for Income ETF Options.]

With Congress passing a $1 trillion investment plan to upgrade and expand U.S. infrastructure, investors can consider exchange traded funds to capture the renewed focus on debt markets.

For instance, municipal bonds rallied over the past two weeks. The iShares National Muni Bond ETF (NYSEArca: MUB), the largest munis-related ETF by assets under management, gained 0.6% since the late October lows.

Meanwhile, according to ICE Data Services, yields on 10-year tax-exempt triple-A muni bonds declined 8% since October 28, the Wall Street Journal reports. Bond yields have an inverse relationship to prices.

While the municipal bond market was largely left out of the infrastructure package waiting on President Joe Biden's signature, along with Democrats' follow-up social spending and climate proposals, the overall infrastructure plans could still help support cities and states indirectly.

"They left out the tried and true mechanism for building local infrastructure in America," Ben Watkins, director of Florida's Division of Bond Finance, told the WSJ.

Nevertheless, investment in roads, sewers, and trains is typically positive for the market over the long term since it helps strengthen municipal credit. The $1 trillion investment plan could also lead to more debt issuance, as some projects could gain partial federal aid, and states and cities will need to pay for the rest.

"In many cases, the local contribution will come from municipal bonds," Patrick Brett, head of municipal debt capital markets at Citigroup and chair of the Municipal Securities Rulemaking Board, the muni bond industry's self-regulatory organization, told the WSJ.

Additionally, ETF investors can look to something like the Nationwide Risk-Managed Income ETF (NYSE Arca: NUSI) to access current income seeking a measure of downside protection.

NUSI follows a rules-based options trading strategy that seeks to produce high income using the Nasdaq-100 Index, an index of the 100 largest non-financial stocks on the Nasdaq exchange. The ETF may potentially complement traditional equity and fixed income allocations or function as a possible hedge for investors.

The Nationwide Risk-Managed Income ETF establishes a collar strategy to generate monthly income. Collar strategies involve holding shares of the underlying stock while at the same time buying protective put options and writing calls for the same security. A put option gives its owner the right but not the obligation to sell the underlying asset at a specified price and on a specified date. A call option gives its owner the right but not the obligation to buy that asset instead.

ETF TRENDS

by MAX CHEN

DECEMBER 8, 2021

We're Seeing Very Strong Demand for Municipal Bonds in December: Hilltop's Kozlik

Watch video.

Dec 8, 2021

MSRB RFC: ESG-Related Disclosure and ESG Labeling

Share Your Perspective on ESG Practices in the Muni Market

Read the MSRB's request for information on ESG-related disclosure and ESG labeling, and submit your comments
by March 8, 2022.

December 8, 2021

Vanguard Sees Muni Bond Supply Slowing to $400 Billion in 2022.

- **Issuers are flush with revenue and aid, says Vanguard's Malloy**
- **Forecast on lower end of muni estimates compiled by Bloomberg**

Vanguard, one of the largest municipal fund managers, expects states and localities to slow bond sales by at least 11% to about $400 billion next year because of a faster than anticipated revenue rebound and billions of dollars in federal aid.

"A lot of municipals are flush with cash," Paul Malloy, head of municipal investments at Vanguard, said in an interview. "They don't need to borrow as much." The firm has almost $267 billion in muni assets.

Vanguard's forecast, including municipal-backed corporate debt, is lower than 2022 forecasts from 11 other strategists compiled by Bloomberg. The 2022 supply estimates ranged from Morgan Stanley's projection of $420 billion to Bank of America's forecast for $550 billion.

Last year, municipal issuers sold about $454 billion in long-term debt as the pandemic shuttered businesses, drove up unemployment and led tax revenue to drop temporarily. With three weeks left in 2021, long-term municipal issuance has reached about $450 billion, according to data compiled by Bloomberg.

On Credit
Malloy expects lighter sales next year because state and local governments have "a lot of cash" and municipal issuers "are in really great shape" from a fundamental credit perspective, he said. The pandemic's revenue hit has subsided for many.

Texas, among the largest state issuers, is an example of the pull back in debt overall, he said. The state usually borrows to prevent a deficit until more revenue arrives.

The state's total sales tax revenue for the three months ending in November 2021 rose 22% from the same period a year ago and is up almost 16% compared to 2019, according to a statement on the Texas comptroller's website.

In addition to rebounding revenue, state and local governments are getting $350 billion from President Joe Biden's American Rescue Plan Act.

On Rates and Valuation
Another reason to reduce borrowing next year is the cost may increase for municipal governments, Malloy said. The 10-year AAA muni benchmark could move up by mid-2022 from the current 1.05%, driven by yields in the Treasury market, Malloy said.

Muni issuers have benefited from rates hovering around historical lows partly because supply largely has not kept pace with investor demand this year and the imbalance has kept a lid on yields.

"It's not going to be as cheap to borrow as it has been," Malloy said. "It's the macro story."

One of the biggest questions for 2022 will be valuations, Malloy said. The muni to Treasury ratio is likely to range between 70% and 75% for debt maturing in 10 years, he said. The ratio was about 71.3% at the last close.

The ratio may hover around 80% for 30-year debt and 50% for bonds maturing in two to five years, he said.

On Covid
The pandemic is "an X-factor," Malloy said. "Always out there for the foreseeable future."

The virus and its variants will contribute to volatility in the market but medical advances and improvements in responses globally mean Covid "doesn't have the same potential for scarring" as it did at the outset, he said.

Bloomberg Markets

By Shruti Singh

December 10, 2021, 11:26 AM PST

What To Look For In 2022 Muni Markets (Radio)

Eric Kazatsky, Senior US Municipals Strategist for Bloomberg Intelligence, joins the show for the "Focus on Munis" segment and has the latest updates on municipal markets. Hosted by Matt Miller and Sonali Basak.

Listen to audio.

Bloomberg Radio

Dec 10, 2021

Citi Muni Deal Wins Preliminary Approval From Texas Officials.

Citigroup Inc. is poised to officially re-enter the Texas municipal-bond market after winning preliminary approval for its first bond sale since a new GOP law caused the bank to stop underwriting state and local debt transactions there.

The Texas attorney general's office provided preliminary approval on a school district debt sale that Citigroup underwrote last month, according to a person familiar with the matter. It's an encouraging sign for the bank, which had to halt its Texas municipal-bond underwriting as it worked to comply with the law seeking to punish Wall Street banks for their gun policies.

Citigroup paused its Texas municipal business after the law went into effect on Sept. 1. The measure barred governments in the state from working with companies that "discriminate" against firearm businesses or trade groups. In 2018, the bank said it would forbid retailers that are its customers from offering bump stocks or selling guns to anyone who hasn't passed a background check or is younger than 21.

But the bank has repeatedly said it can comply with the legislation. In November, Citigroup won an auction for a $26 million bond offering sold by the Alamo Heights Independent School District, which stands to be the firm's first muni deal in Texas since late August.

The attorney general's office, which reviews proceedings for bond deals in Texas, typically provides a so-called preliminary approval letter to issuers five business days before the bonds are supposed to close, according to its website. Final approval is expected two business days before the close of the deal, the website says.

The office of Texas Attorney General Ken Paxton, a Republican, did not respond to a phone call and email seeking comment on Wednesday. A representative for Citigroup declined to comment.

The public finance division in Paxton's office sent the preliminary approval letter for the school district's bonds on Tuesday, according to the person, who asked not to be named because the letter isn't public yet.

The bond documents for the Alamo Heights Independent School District deal show the closing date is expected to be on or about Dec. 14.

Mike Hagar, the district's assistant superintendent of business and finance, said in an email in November that they felt "confident" with Citigroup and that the attorney general's office would approve the sale. Hagar did not immediately respond to a request for comment on Wednesday.

Bloomberg Markets

By Amanda Albright and Danielle Moran

December 8, 2021, 10:58 AM PST

MSRB Requests Information on ESG Practices: Cadwalader

The MSRB issued a Request for Information on environmental, social and governance ("ESG") practices in the municipal securities market. MSRB is seeking information on (i) the disclosure of related risk factors and practices, and (ii) the labeling and marketing of municipal securities with ESG designations. Responses must be submitted by March 8, 2022.

Specifically, MSRB is asking the following questions:

Municipal Issuers:

- Are you currently providing ESG disclosures or information beyond what is legally required in your offering documents?
- Do you believe that the information in the ESG disclosures should be standardized?

Investors in Municipal Securities:

- Do you consider ESG information material to your investment decision?
- Do you have access to ESG-related information to make an informed investment decision?

Dealers:

- Does underwriting ESG-labeled bonds create any novel compliance issues? How might that differ between a primary offering and purchase or sale in the secondary market?

Municipal Advisors:

- Does the formulation and delivery of advice for ESG-related bonds and ESG-related disclosures raise any novel compliance challenges?

All Municipal Market Participants:

- Are there any ESG factors that could pose a systematic risk to the municipal market?
- There are organizations that have established voluntary standards; do those standards provide adequate guidance and transparency for investors?

Cadwalader Wickersham & Taft LLP

December 8 2021

MSRB Extends Comment Deadline on Draft Compliance Resources for New Issue Pricing: Cadwalader

The MSRB extended the deadline for comments on draft compliance resources related to new issue pricing. The comment deadline was extended from January 4, 2022 to January 19, 2022.

As previously covered, one proposed compliance resource would focus on underwriting activity under MSRB Rule G-17 (“Conduct of Municipal Securities and Municipal Advisory Activities”) and supervisory obligations under MSRB Rule G-27 (“Supervision”). The second resource would focus on duty of care obligations under MSRB Rule G-42 (“Duties of Non-Solicitor Municipal Advisors”) and non-solicitor municipal advisors’ duties under MSRB Rule G-44 (“Supervisory and Compliance Obligations of Municipal Advisors”).

Cadwalader Wickersham & Taft LLP

December 7 2021

SEC Charges Adviser with Section 204A Violation for Failing to Maintain MNPI Procedures: Paul Hastings

Recently, the SEC settled an enforcement action against a registered investment adviser (the "Adviser") for allegedly failing to implement policies and procedures reasonably designed to prevent the misuse of material non-public information ("MNPI") in violation of Section 204A of the Investment Advisers Act of 1940 ("Section 204A"). The terms of the settlement required the Adviser to pay an $18 million penalty. Although the SEC's pursuit of violations of Section 204A is nothing new, this action is significant for a couple of reasons.

First, the SEC's allegations focused on policies and procedures governing advisory personnel who were considered "above-the-wall" in relation to the Adviser's MNPI informational barriers. Specifically, although the Adviser had instituted walls that prohibited certain personnel from obtaining MNPI from the Adviser's affiliates, the Adviser allegedly had no procedures or "walls" that governed senior personnel who sat on the Adviser's Investments Committee (i.e., in a position above the informational walls) and ratified investment decisions for the Adviser. Those senior individuals also allegedly "had access to" MNPI about many of the issuers in which the Adviser invested through their work as consultants acting on behalf of the Adviser's affiliates.

Second, the SEC's allegations suggest that the agency is willing to take an aggressive view when determining what type of information might constitute MNPI for the purpose of Section 204A. Here, the SEC classified information relating to the Adviser's internal investment strategies and allocations as "MNPI" for the purposes of Section 204A. In other words, the SEC considered the procedures the Adviser had in place to prevent the misuse of information relating to the Adviser's own investment holdings and allocations in determining whether the Adviser's policies were adequate under Section 204A. Traditionally, the SEC has not designated this type of information as MNPI for the purposes of Section 204A. Further, some of the information at issue related to municipal debt securities, which are rarely, if ever, the subject of SEC insider trading claims.

Background: Senior Advisory Personnel Wore Many Hats and Sat Above the "Wall"

According to the SEC, the Adviser invested the vast majority of its funds indirectly through third-party investment managers who maintained discretion over the funds. Some of these indirect investments were held in separately managed accounts ("SMAs"). The SEC alleged that the Adviser was aware of the SMAs' holdings and activity because the Adviser maintained books and records of all trades executed by the third-party managers in the SMAs. The SEC also alleged that the Adviser had insight into certain details regarding the holdings in the remaining portion of the indirect investments because the Adviser had access to, among other things, client updates that it received from the third-party managers.

The SEC alleged that the Adviser managed the money of the partners and personnel of the Adviser's parent company ("Parent"), a large consulting company. To help manage the money, the Adviser apparently formed an Investments Committee that was responsible for overseeing and monitoring all investments. The Investments Committee was allegedly responsible for ratifying or approving investment decisions, including planned allocations to third-party managers. The SEC alleged that members of the Adviser's Investments Committee also separately provided consulting services to public companies and entities emerging from bankruptcy on behalf of the Parent.

Among other things, the SEC alleged that the Adviser invested hundreds of millions of dollars in the securities of issuers about which members of the Investments Committee had access to substantial MNPI as a result of the consulting services that those individuals performed on behalf of the Parent. For example, the SEC alleged that the Adviser's Investments Committee allocated millions of dollars in investments to a third-party manager that substantially invested in a public company ("Company A"). The SEC alleged that, at the same time, a member of the Investments Committee was responsible for overseeing the strategic and corporate advice that the Parent was then providing to Company A. The SEC indicated that, given this type of conduct, the "risk of misuse of MNPI was real and significant."

The SEC alleged that the Adviser did not have policies and procedures to address this risk and prevent the misuse of MNPI to which members of the Investments Committee had access.

SEC Classifies the Adviser's Internal Investment Decisions as "MNPI"

The SEC also alleged that the Adviser lacked policies and procedures to prevent the misuse of MNPI relating to the Adviser's own internal investment decisions. Specifically, the SEC alleged that members of the Investments Committee were "aware of MNPI regarding [the Adviser's] investment strategies, concentration limits, risk limits, and third-party managers allocations, and had access to [the Adviser's] holdings," including holdings of securities that are very infrequently the subject of SEC insider trading claims, such as municipal bonds and private senior secured debt for an issuer in bankruptcy proceedings.

The SEC claimed that, armed with this MNPI regarding the Adviser's investment positions, members of the Investments Committee might be tempted to engage in conduct designed to influence those investments. For example, the SEC suggested that members of the Investments Committee might influence their consulting advice in a way that favored the Adviser's investments, given the overlap between the issuers for which the members of the Investments Committee provided consulting services and the issuers in which the third-party managers made investments. Notably, the SEC did not allege that any of the members of the Investments Committee actually tried to influence the investment decisions in an improper way. Nonetheless, the SEC alleged that the Adviser did not have policies and procedures in place to prevent the misuse of this "MNPI."

The Takeaways

This action presents many takeaways and reminders for registered broker-dealers and investment advisers:

- A violation of Section 204A does not require an allegation of insider trading
- According to the SEC, a "risk" of misuse of MNPI is sufficient to substantiate a finding that policies and procedures are not reasonably designed
- From the SEC's perspective, a potential violation of Section 204A may be predicated on an individual merely having "access to" MNPI
- The SEC might allege that MNPI includes internal advisory decisions regarding a potential investment, which might significantly complicate an adviser's/broker-dealer's efforts to design procedures to prevent the misuse of MNPI under the federal securities laws
- "Above-the-wall" procedures must be considered when implementing informational barriers to prevent the misuse of MNPI
- Wearing many hats can lead to complex issues regarding MNPI policies and procedures under Section 204A

Paul Hastings LLP – Thomas A. Zaccaro , Nick Morgan, John P. Nowak and Jessica Baker

December 2 2021

[Investor Focus On Inflation Drives Year-End Flows.]

Summary

- With inflation continuing to rear its ugly head (transitory or not), market participants have pushed inflation-related mutual fund classifications to the top of the charts in 2021 so far.
- Many individuals are continuing to favor fixed income funds and ETFs by injecting $465 billion of net new money year-to-date into the group over equity funds and ETFs (+$349.8 billion).
- While the average equity mutual fund has returned a handsome 14.83%, taxable and tax-exempt fixed income funds are up just 0.21% and 1.86%, respectively, year-to-date.

Continue reading.

Seeking Alpha

Dec. 12, 2021

The South's Casino Capital Is Selling Bonds in a Bet on Wholesome Fare.

- **Water park, hotels would replace casino in Mississippi county**
- **County to sell about $148 million of munis for project funding**

One of the U.S.'s top gambling destinations is issuing bonds next week in order to diminish its reliance on casinos.

Tunica County, Mississippi, is selling about $148 million in urban renewal revenue bonds to convert the former Harrah's resort into a complex featuring a convention center, two hotels, a water theme park and a youth sports complex.

"This project is intended to create a family-oriented venue as a complement to the existing gaming and tourism industry in the region," according to offering documents for the deal, which is unrated and will be sold to qualified investors in minimum denominations of $100,000.

The move by the county of almost 10,000 residents to expand its offerings underscores the peril of tying one's economy to gambling. As it says in preliminary offering documents, "In the early days of Mississippi gambling, there was little competition, with patrons trekking from Oklahoma, Missouri, Tennessee and elsewhere." But those days are over, the documents say, because those "and many other states" have their own casinos.

This deal has a lot of moving parts. The basic framework is as follows: The issuer of the bonds is Tunica County. Proceeds of the sale will be loaned to Tunica Hospitality & Entertainment LLC to acquire and redevelop the 2,220-acre property. The issuer will then lease the property from Tunica Hospitality & Entertainment for as long as 30 years, with lease payments covering debt service. The county is going to pay the developer annual fees, while also selling the developer the asset concurrently with the bond transaction.

The county says the resort will open in stages. CBRE Hotels, author of the feasibility study contained in the offering documents, projects revenue at $35 million in 2022, $104 million in 2025 and almost $124 million in 2031. Annual debt service, meanwhile, is projected at $11.2 million, with annual debt-service coverage at around three times.

Buyer's Risk

And if the money doesn't pour in, in adequate amounts? That's the bond buyer's risk. The issuer doesn't have any obligation to levy special taxes to support the debt. As it says right on the cover of the memorandum, purchase of these bonds "involves a significant degree of investment risk."

The county, which is located on the Mississippi River in the northern part of the state, less than an hour by car southwest of Memphis, Tennessee, "is one of the top six destinations in the United States in terms of gambling revenues," according to offering documents.

But even that ranking may not be enough. Back in 2014, when Caesars Entertainment Corp. shuttered the Harrah's casino in Tunica, the largest of 10 in the area at the time, a Caesars executive told Bloomberg News, "There's just too much supply in that market."

This was just seven years after the Federal Reserve Bank of St. Louis published an article headlined, "Tunica, Mississippi, Lays Big Bet on the Casino Industry," and referred to the "Tunica miracle."

The feasibility study describes the rise and fall of the casino market in the county.

In 1990, state lawmakers made gambling legal along the Gulf Coast and on major waterways, and in 1992, the first casino in the county opened. Nine others followed, and Tunica became "The South's Casino Capital."

Economic Improvement

The local economy does appear to have reaped some benefits. In 1989, it "ranked fourth in the United States in terms of the number of families below the poverty level," according to the CBRE study. It's currently 269th, out of more than 3100 counties, according to U.S. Census data.

But even with that improvement, the feasibility report is a study in dejection: "The Northern Mississippi casino market continues to decline, a trend that began in 2007 due to increased competition" and that accelerated with the 2007-2009 recession. Since 2010, the study says, gaming revenue has dropped at a 6.4% average annual rate in the county.

And yet, casinos still form the basis of the bond issuer's pitch to investors. The executive summary points out that "as of 2020, Tunica County has the highest level of tourism spending of any Mississippi county, and this property will benefit from its location and proximity to casinos."

Gamblers are by nature an optimistic bunch. Perhaps more wholesome fare and the convention business will succeed where casinos have not. That's the big bet the buyers of these bonds are making.

Bloomberg Markets

By Joseph Mysak Jr

December 9, 2021, 7:11 AM PST

— With assistance by Alexandre Tanzi, and Sam Hall

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

Infrastructure Finance Series Featuring Frost Brown Todd LLC.

With a growing national focus on infrastructure financing, communities throughout the country are actively searching for innovative strategies and solutions for building transportation, energy, water, broadband, and resiliency infrastructure. CDFA is honored to partner with Frost Brown Todd LLC and its affiliate FBT Project Finance Advisors LLC to present the Infrastructure Finance Series. This in-depth series focuses on the characteristics of infrastructure, the innovative tools for financing various infrastructure projects, and how the private sector impacts the landscape of infrastructure investment.

Frost Brown Todd LLC is a full-service law firm dedicated to refining the art of client service, by leveraging technical, industry, and legal knowledge and hands-on experience to serve a diverse client base. Its affiliate FBT Project Finance Advisors LLC is a registered municipal advisor focusing on development finance. Counseling clients from the earliest stages of each project through financing, construction, and project administration, FBT Project Finance Advisors works with clients to develop solutions that fit their community's needs, protect their balance sheet, and deliver bottom-line results.

Learn more.

S&P Pension Spotlight: Arizona

Key Takeaways

- 2021 actuarial assumptions have reduced risk and, along with $1 billion in state contributions, were conducive to a more favorable outlook on state pension plans compared to the fiscal 2020 position.
- Arizona's largest statewide pension plans are relatively underfunded as of fiscal year-end 2020 based on relatively aggressive market return assumptions, which could lead to cost volatility.
- Pension costs are expected to rise for issuers across the state due in part to growing legacy costs, which could stress some local government budgets.
- Pension obligation bond (POB) issuance increased over the last two years, which we expect will continue for municipalities, counties, and now fire districts.

Continue reading.

Financing Affordable Housing with 501(c)(3) Bonds: Orrick Webinar

December 14, 2021 | 2:00 p.m. EST / 11:00 a.m. PST

In a market where volume cap is becoming less available, 501(c)(3) entities provide an alternative means of accessing capital to provide affordable housing. This webinar will be a discussion of the different ways 501(c)(3) entities can be used.

Click here to learn more and to register.

High-Yield Munis Are the Place to Be: Neuberger's Iselin

Neuberger Berman's Head of Municipal Fixed Income Jamie Iselin discusses the outlook for the municipal-bond market in 2022. He speaks with Bloomberg's Taylor Riggs on "Bloomberg Markets: The Close."

Watch video.

Bloomberg Markets: The Close

December 8th, 2021

Pre-Order the New Electronic GAAFR.

Highlights of the new eGAAFR:

Updated to incorporate all new authoritative guidance through GASB Statement No. 97, and GASB's Implementation Guide updates through June 30, 2021.

Enhanced anticipation notes (RANs, TANs, and BANs) discussion in Chapter 12 – Asset and Liability Recognition and Measurement in Governmental Funds and added Illustrative journal entries for issuance and refunding of bond anticipation note.

Revamped Chapter 20 – Postemployment Benefits:

- Topics reorganized to reflect the various types of postemployment benefit plans.
- Relocated and expanded note disclosure content to include all requirements for all types of trusted defined benefit plans, all non-trusted defined benefit and defined contribution plans, and nonemployer contributors.
- Added accounting and financial reporting for nongovernmental cost-sharing pension plans.

Added a new Chapter 27, with expanded discussion of accounting for leases, PPPs, and SBITAs, including determining the terms (length) of the agreements and measuring assets, liabilities, deferred inflows and outflows of resources, and inflows and outflows of resources recognized for each type of arrangement.

Incorporated detailed note disclosure requirements for:

- Subscription-based information technology arrangements (SBITAs)
- Public-private and public-public partnerships (PPPs) and availability payment arrangements (APAs)
- In-substance defeasances of debt using only existing resources, and
- Minority-share asset retirement obligations.

Expanded discussion of note disclosure and actuarial section requirements for reporting by pension and OPEB plans.

Provided guidance for governments transitioning their reference rate(s) from an interbank offering rate, including LIBOR based on GASB Statement No. 93.

PRE-ORDER TODAY!

The new electronic *GAAFR* has been updated to incorporate all new authoritative guidance through GASB Statement No. 97, and GASB's Implementation Guide updates through June 30, 2021, and much more. Note: All current *GAAFR Plus* subscribers will receive the publication as part of their subscription. Not a *GAAFR Plus* subscriber? Pre-order by December 31 and receive a four-month trial to *GAAFR Plus*.

SEC Names New Acting Director of the Office of Municipal Securities.

The Securities and Exchange Commission (SEC) named Ernesto Lanza as its acting director of the Office of Municipal Securities (OMS).

Lanza replaces Rebecca Olsen, who was named deputy chief for the Division of Enforcement's Public Finance Abuse (PFA) Unit. Mark Zehner, who held the PFA role since July 2010, is retiring from the agency after 25 years of service.

"I look forward to working closely with Ernie on oversight of municipal securities," SEC Chair Gary Gensler said. "This critical $4 trillion market finances local governments and the essential infrastructure of our communities, such as roads, hospitals, and schools. I thank Rebecca for her leadership of OMS since 2018 and congratulate Mark on his retirement from the SEC."

Lanza has served as senior counsel to the OMS director since 2019. Before that, Lanza was in private practice focusing on public finance matters related to securities law, disclosure, and market structure issues. Previously, he served as the deputy executive director of the Municipal Securities Rulemaking Board (MSRB), where he led several policy initiatives, including the launch of the EMMA system. Prior to that, Lanza was the MSRB's chief legal officer and general counsel. He holds a J.D. from the University of Pennsylvania Law School and earned his undergraduate degree cum laude from Harvard University.

Olsen became head of OMS in September 2018. She previously served as the deputy director, chief counsel, and attorney fellow in the office. She earned a bachelor's degree from Boston College, a J.D. from the Georgetown University Law Center, and an LL.M in International Business Law from the Vrije Universiteit Amsterdam, The Netherlands.

Zehner joined the SEC in January 1997. Before joining the Enforcement Division, he served as Regional Municipal Securities Counsel in the SEC's Philadelphia Regional Office and as an attorney-fellow in OMS. Zehner received a J.D. from the University of Pennsylvania Law School and a B.A. from Dartmouth College. He won the Stanley Sporkin Award in 2006, the agency's highest honor for enforcement staff.

FINANCIAL REGULATION NEWS

BY DAVE KOVALESKI | DECEMBER 7, 2021

Income Investors Should Consider Incorporating a Muni ETF Strategy.

As we dive into what people are missing — and what risks they might be accidentally taking — in traditional approaches, investors can consider an active exchange traded fund municipal bond strategy that looks across the entire market opportunity set instead of being tied to a benchmark's methodology.

In the recent webcast, Hidden Income Your Munis Are Missing: An Expert Perspective, Joseph Gotelli, vice president and portfolio manager at American Century Investments, helped outline the current market environment. For instance, Congress is looking at up to $9.4 trillion in U.S. fiscal spending since the start of COVID-19. New issuances of tax-exempt munis have been steadily declining over the years. More importantly, we are seeing increased interest for tax-exempt munis as a greater source of value for income-minded investors, especially as the Biden administration eyes higher tax rates to pay for the new government spending plans.

Looking at the municipal bond asset category, Gotelli also noted that munis offer diversification benefits for a traditional bond portfolio mix. Historically, munis have rarely defaulted, with Baa-rated corporates exhibiting three times more instances of defaults than Baa-rated munis.

Beyond the rate-risk outlook, Gotelli argued that municipal bond exposure can help further diversify an investor's fixed income portfolio through non-correlated returns. The low correlation to other asset classes makes the muni bond category important in a well-diversified portfolio. Investment-grade municipal bonds exhibit a trailing 10-year correlation of 0.73 to U.S. core bonds, 0.23 to U.S. high-yields, and 0.04 to U.S. equities.

The American Century Diversified Municipal Bond ETF (NYSEArca: TAXF) is an actively managed municipal bond fund that combines investments in thoroughly researched high-yield and investment-grade municipal bonds. Designed for investors seeking current income, the fund dynamically adjusts investment-grade and high-yield exposures based on prevailing market conditions.

TAXF incorporates a top-down and bottom-up selection process to improve risk management and create a well-diversified muni bond portfolio. For example, the ETF's management team takes a macroeconomic outlook that incorporates an economic outlook, duration, rates, and yield curve. The municipal market outlook incorporates sectors, yield curve, and municipal relative value vs. taxable fixed income. The fundamental credit analysis incorporates internal credit review, economic financial strength, debt analysis, assigned internal ratings, and credit committee reviews. The relative value discussion incorporates bond pricing review, portfolio fit, and structure security analysis. The risk budgeting process incorporates position sizing, risk model review, and expected return/tracking error projections. Lastly, the buy/sell order incorporates pre-trade compliance, portfolio managers transact, and best execution prices.

TAXF's management team also follows a fundamental credit analysis process that includes internal credit review; economic, financial strength, debt, and political risk analysis; assigned internal rating; and surveillance of ongoing issuer exposures.

Matt Lewis, vice president and head of ETF implementation and capital markets at American Century Investments, also explained the benefits of the ETF structure as an investment tool that provides more efficient access to the municipal bond market.

Specifically, the on-screen liquidity or current bid/offer spread and size available to trade reflect trading activity that has already transpired and is visible in the secondary market, where ETFs are priced, traded, and settled like stocks. The non-displayed liquidity or market maker's ability to provide liquidity for larger trades reveals that with the assistance of a broker, this level of liquidity may be accessed. Additionally, the underlying basket or creation/redemption process represents how market makers can access the liquidity of the underlying securities to meet investors' demands.

"Our solutions cover a vast array of investment capabilities," Lewis said. "These capabilities allow us to respond to specific client needs and also provides flexibility to offer unique investment solutions. Our ability to deliver a variety of investment solutions has become increasingly important to the various types of clients we serve."

ETF TRENDS

by MAX CHEN

DECEMBER 8, 2021

[Retired SEC Enforcer Zehner Reflects on Landmark Muni Cases.]

Mark Zehner spent 25 years dropping the hammer on municipal securities wrongdoers, helping to firmly establish the Securities and Exchange Commission's enforcement of the laws in the muni market.

His career saw the SEC bring cases against negligent issuers and audacious fraudsters, broker-dealers and bond lawyers. He still views the municipal market as a place populated overwhelmingly by good people.

"Fundamentally, the vast majority of muni issuers are trying to do the right thing," Zehner said. "The vast majority of underwriters and municipal advisors are trying to do the right thing."

Zehner, 62, retired as the deputy chief of the SEC's public finance abuse unit at the end of November. He talks quickly and laughs easily, but there's no mistaking how seriously he has taken the work to which he devoted the majority of his professional life. He can recall the details of cases dating back 15 or more years, and he speaks about them with clear conviction.

"We call 'em like we see 'em," he said.

Zehner began his SEC tenure in 1997 as an attorney fellow in the SEC?s Office of Municipal Securities, where he got a taste of the life of an enforcer through examining the yield-burning scandal of the 1990s. Working in Washington, D.C., but maintaining his home in Philadelphia, Zehner commuted to and from work by train daily before finding a home in the SEC's Philadelphia office.

Zehner's career as an enforcer spans a number of landmark cases that created precedents in municipal securities enforcement. In a phone interview shortly after his retirement, Zehner discussed a number of those cases and offered some thoughts on the future.

The first cases Zehner named as significant were two that he said served as a sort of announcement the SEC wouldn't hesitate to bring charges in the municipal bond space.

The SEC's 2004 action against the Dauphin County, Pennsylvania General Authority saw the commission charge the issuer for failing to disclose to potential bondholders that the tenant responsible for more than half of the parking revenues backing its 1998 bonds had already planned to leave that space at the time the bonds were issued. The SEC found this was material to would-be purchasers of the bonds, and should have been included in the official statement.

Around the same time, the SEC also announced an administrative action against broker-dealer L. Andrew Shupe and bond lawyer Ira Weiss for alleged violations of the antifraud provisions of the federal securities laws in connection with a June 2000 offering of tax-exempt notes by the Neshannock Township School District, located in Lawrence County, Pennsylvania.

The SEC found that the true purpose of the offering was a scheme by underwriter Shupe to secure $225,000 dollars of arbitrage profits by investing the proceeds for three years without spending them on capital projects, even though the tax-exempt status of the bonds depended on the authority reasonably expecting to spend down the proceeds in that time. The SEC further alleged that Weiss also committed fraud by nonetheless rendering an unqualified opinion the notes were tax-exempt and that nothing had come to his attention to lead him to believe the offering documents were inaccurate.

The case against Weiss became a months-long affair of appeals, eventually ending with the SEC’s triumph in the U.S. Court of Appeals for the District of Columbia.

These cases served as an announcement of the SEC’s readiness to act when it saw cause, Zehner said, while other cases established still more precedents.

Perhaps no enforcement pursuit of Zehner’s career created quite as much of a muni market splash as the Municipalities Continuing Disclosure Cooperation Initiative, or MCDC. Launched in March 2014, the MCDC promised underwriters and issuers lenient settlements if they self-reported instances where issuers falsely said in offering documents they were in compliance with their continuing disclosure agreements.

The initiative was the brainchild of then-SEC enforcement lawyer Peter Chan, who is now in private practice. But Zehner said the MCDC, like all of the muni actions of the past decade, was a triumph of the work of the whole public finance abuse unit.

“That was an incredible team effort,” Zehner said.

The MCDC inspired fierce debate among issuer officials and bond lawyers, some of whom accused the SEC of being too aggressive in targeting issuers. In total, the initiative led to settlements with 72 issuers from 45 states. In addition, 72 underwriters representing 96% of the underwriting market by volume paid a total of $18 million of MCDC settlements.

Zehner said he believes the MCDC, which wrapped up in late 2016, had a positive impact on issuer disclosure practices in the short term. But it remains to be seen whether that will stick, he said.

Zehner said looking forward, one might do well to examine the SEC’s orders suspending two former KPMG auditors who approved and authorized the issuance of an unmodified audit opinion on The College of New Rochelle?s fiscal year 2015 financial statements, despite not having completed critical audit steps and having been given information that raised serious red flags.

The school’s controller had already faced SEC fraud charges for overstating the financial position of the now-defunct school. Bond lawyers said the KPMG cases were important, because the action showed that the SEC would hold professionals like auditors accountable for negligence even if they weren’t complicit in underlying fraud.

“I think we will see more accounting cases going forward,” Zehner predicted.

Zehner was complimentary of both the unit chiefs he served under since the SEC announced the creation of its specialized enforcement units, including what is now the public finance abuse unit, in 2010. Elaine Greenberg led the unit until 2013 when she left to enter private practice, and the unit has since been led by LeeAnn Gaunt.

Zehner’s place as deputy chief has been filled by Rebecca Olsen, who had until recently been director of the Office of Municipal Securities.

As described by him, Zehner’s future holds a break from the intellectual challenge of securities law. He said he wants to travel and devote more time to his work in the Catholic Church. Much of Zehner’s work is through the Saint Vincent De Paul Society, a nearly 200-year old society dedicated to providing help to the needy.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 12/09/21 09:03 AM EST

Inflows into U.S. Bond Funds Dwarf Equity Purchases in 2021 -Lipper

Dec 10 (Reuters) – U.S. bond funds have attracted record inflows this year, despite worries about inflation and expectations the Federal Reserve could roll back its pandemic-era stimulus measures earlier.

According to Refinitiv Lipper data, U.S. bond funds attracted a net $612 billion in the first eleven months of this year, already surpassing the record inflow of $486.18 billion recorded in 2019.

Meanwhile, U.S. equity funds saw net inflows of $248.81 billion after two years of outflows.

The higher inflows into U.S. bond funds, despite a rally in equities, highlights an investor preference for safety and stable returns during the second year of the COVID-19 pandemic.

The Lipper data showed U.S. equity funds have delivered a return of 16.4% on average so far this year, compared with 0.8% for bond funds.

U.S. taxable bond funds drew a record $465.89 billion in net buying while municipal bond funds secured purchases of $96.5 billion.

U.S. short/intermediate investment-grade funds saw inflows of $242.22 billion, a 12% increase over the first 11 months of 2020, U.S. general domestic taxable fixed income funds received $113.35 billion, a three-fold increase, while inflation protected funds attracted a record $70.77 billion.

Among equity sector funds, financials are on track for their first annual inflows in four years, totalling $23.91 billion to the end of November, while investors purchased tech funds worth $22.22 billion.

Meanwhile, U.S. money market funds are set for a fifth consecutive year of inflows with net inflows of $266.36 billion so far.

Reporting by Gaurav Dogra and Patturaja Murugaboopathy in Bengaluru; Editing by Kirsten

Donovan

Dec. 10, 2021

[New Jersey, Illinois Get an Accidental Economic Reset.]

Among the many ripples that came out of the 2008 financial crisis, one was the financial damage to older, slower-growing, heavily-indebted states like Illinois and New Jersey. Investments in infrastructure and public employees had to be put on hold as the governments spent years grappling with budget deficits and high levels of debt. Now, thanks to the surge in tax revenues being delivered by the current economic rebound, these states have an opportunity they haven't had in 15 years: the ability to invest rather than figuring out how to cut the budget.

It's a reminder of how federal dollars and a robust recovery can have a dramatic impact on what were previously perceived as structural problems.

Illinois and New Jersey have the lowest credit ratings of all the states, hovering not far from junk status. They've had multiple downgrades from the major ratings agencies since the 2008 recession driven by ever-growing long-term liabilities like pension obligations, aging populations, slow population growth, and a rising tax burden that has led to the loss of businesses and residents who move to states with lower costs of living. There have been no easy solutions to this predicament, which is why the problems have persisted and grown worse for more than a decade.

But the past 18 months has shown there was an easy solution, however improbable its origin (and with uncertainty about how long it will last): explosive economic growth that leads to a surge in tax revenues. The recovery in tax revenues has actually been faster than the recovery in economic activity has been; since the fourth quarter of 2019, the nominal level of gross domestic product has increased by 6.9% while the level of state and local government tax receipts has risen 12.0%.

[Continue reading.]

Bloomberg Tax

Dec. 10, 2021, 3:00 AM

- [Junk to Drive 2022 Muni Supply to Record $500 Billion.]
- [Valuing Water Rights in Eminent Domain: Nossaman]
- [ESG Relevance Scores in Credit Ratings vs Sustainable Fitch ESG Ratings in Financial Institutions: Fitch Webinar]
- [California Scheming.]
- *State ex rel. Pike County Convention and Visitor's Bureau v. Pike County Board of Commissioners* – Supreme Court of Ohio holds that county board of commissioners, under statute authorizing tax on lodging, had discretion to redirect from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging.
- And finally, I Heart, Like, Law Stuff is brought to us by *Sweet v. Town of Bargersville*, in which the United States Court of Appeals stated that, "To top it all off, she bullied a fellow employee by accusing her of receiving her job as a favor from a Town council member." To top it all off? Soaring

judicial rhetoric, no? Are the clerks all 14 year-old girls these days? Feels like we're on our way to emoji opinions. Well, penumbras of emojis.

MUNICIPAL CORPORATIONS - CALIFORNIA

City of Oxnard v. County of Ventura

Court of Appeal, Second District, Division 6, California - November 23, 2021 - Cal.Rptr.3d - 2021 WL 5460725 - 21 Cal. Daily Op. Serv. 11,559 - 2021 Daily Journal D.A.R. 12,037

City brought action against surrounding county seeking preliminary injunction to prevent county from providing ambulance services within city limits pursuant to joint powers agreement.

The Superior Court denied city's motion for preliminary injunction. City appealed.

The Court of Appeal held that:

- City lacked authority under Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act to resume administration of its own ambulance services;
- City's authority to provide and administer ambulance services, even if police power, was subject to limits set forth in the Act; and
- Any withdrawal by city from joint powers agreement did not provide basis for city to resume providing ambulance services absent county's consent.

City lacked authority under Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act to resume administration of its own ambulance services after it had entered into joint powers agreement with surrounding county regarding ambulance services; joint powers agreement empowered county, not city, to contract for and administer ambulance services, and fact that city was indirectly contracting for such services by being signatory to joint powers agreement did not make it eligible under Act's grandfathering provision which allowed cities to continue to provide existing services until such services were integrated into larger emergency medical services system.

City's authority to provide and administer ambulance services was subject to limits set forth in the Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act, even if provision of ambulance services was police power; city had power to make and enforce only those ordinances and regulations that were not in conflict with general laws, and the Act was a general law.

Any withdrawal by city from joint powers agreement with surrounding county regarding ambulance services did not provide basis for city to resume providing ambulance services absent county's consent; as of date specified in section of the Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act allowing cities to continue to provide existing services until they entered into an agreement with a county to provide such services, county's authority to provide ambulance services in city limits did not come from joint powers agreement, but from Act, and under Act, city could not expand its control by excluding county from provision of ambulance services.

ZONING & PLANNING - FLORIDA

Persaud Properties FL Investments, LLC v. Town of Fort Myers Beach

District Court of Appeal of Florida, Second District - December 11, 2020 - 310 So.3d 493 - 45 Fla. L. Weekly D2772

Property owner filed suit against town for declaratory relief, alleging a taking under state law and deprivation of due process under state constitution, and seeking mandatory injunction following town's determination that property owner had abandoned nonconforming use of property which permitted alcohol sale on part of property that extended onto environmentally critical zone.

The Circuit Court granted town's motion for summary judgment on all counts. Property owner appealed.

The District Court of Appeal held that town zoning ordinance included intent element, and thus property owners did not abandon nonconforming use during period of renovations.

Town zoning ordinance which provided that nonconforming use of property in environmentally critical zone specific to sale or service for on premises consumption of alcoholic beverages "may continue until there is an abandonment of permitted location for continuous nine-month period" included an intent element, and thus property owners did not abandon nonconforming use of property during one-year period of closure while renovations and construction were ongoing, where there was no evidence property owners intended to discontinue selling alcohol in environmentally critical zone once renovations were complete.

PUBLIC EMPLOYMENT - INDIANA

Sweet v. Town of Bargersville

United States Court of Appeals, Seventh Circuit - November 17, 2021 - 18 F.4th 273 - 2021 IER Cases 440,722

Former town employee, a customer-service representative in clerk-treasurer's office, brought § 1983 action against town and clerk-treasurer alleging retaliation in violation of First Amendment right to free speech arising from employee's termination five months after she criticized clerk-treasurer for reconnecting utility service of a wealthy delinquent customer.

The United States District Court granted summary judgment for town and clerk-treasurer. Former employee appealed.

The Court of Appeals held that:

- Employee's criticism of clerk-treasurer was not protected speech;
- Gap of five months between employee's criticism and her firing was too great to support an inference of retaliatory motive; and
- Purportedly shifting explanations for the firing did not establish retaliatory motive.

Town employee's criticism of elected town clerk-treasurer for reconnecting utility service of a wealthy delinquent customer amounted to a complaint about possible misconduct in employee's official area of responsibility, and thus the criticism was not constitutionally protected speech, where employee's job duties as customer-service representative in clerk-treasurer's office included handling utility disconnections, despite argument that it was not employee's job as a low-level employee to confront a high-ranking elected official about questions of policy.

PUBLIC MEETINGS - PENNSYLVANIA

Marshall v. Amuso

United States District Court, E.D. Pennsylvania - November 17, 2021 - F.Supp.3d - 2021 WL 5359020

Attendees of school board meetings whose public comments were interrupted or terminated pursuant to board policies brought action against school district seeking preliminary injunction to prevent application of policies that restricted their speech at public meetings.

The District Court held that:

- Policies which prohibited certain comments constituted viewpoint discrimination, for purposes of as-applied challenge to policies under Free Speech Clause;
- Policies which restricted speech at public meetings were irreparably clothed in subjectivity and were thus unconstitutionally vague under First Amendment;
- Policies which restricted speech at public meetings were unconstitutionally overbroad in violation of Free Speech Clause;
- Policy which required attendees of board meetings to publicly state their home address before speaking during period for public comment was facially invalid under Free Speech Clause;
- Plaintiffs showed that they would suffer irreparable harm absent grant of preliminary injunction;
- District failed to show that they would suffer risk of irreparable harm due to preliminary injunction; and
- Balance of equities supported waiver of requirement for plaintiffs to pay injunction bond.

PUBLIC RECORDS - VERMONT

McVeigh v. Vermont School Boards Association

Supreme Court of Vermont - November 5, 2021 - A.3d - 2021 WL 5145183 - 2021 VT 86

Requester brought action against private nonprofit corporation, a membership organization made up of school boards, seeking declaration that corporation was a public agency under the Public Records Act (PRA) and therefore had to comply with its request for copies of its records.

The Superior Court entered summary judgment for nonprofit corporation. Requester appealed.

The Supreme Court held that nonprofit corporation did not qualify as a “public agency” subject to the PRA.

Private nonprofit corporation, a membership organization made up of school boards, was not an instrumentality of the state, and therefore, it did not qualify a “public agency” within meaning of the Public Records Act (PRA); although association was involved in aspects of public education and had power to appoint members to certain boards and commissions, it was not a means through which the state or its subdivisions performed a fundamentally governmental function.

Fitch Ratings 2022 Outlook: U.S. States and Local Governments

Fitch’s Sector Outlook: Neutral Fitch’s outlook for U.S. states and local governments in 2022 is neutral relative to surprisingly strong 2021 underlying business conditions. Operating conditions generally link closely to economic trends given the primary reliance on taxes. We anticipate national economic growth will remain ahead of its long-term trend next year, but slow considerably relative to the current year as the recovery from the pandemic matures and the immediate effects of enormous, pandemic-driven federal fiscal policy supports wane. States and local governments will benefit in 2022 and beyond from their share of the $350 billion in direct aid provided under the March 2021 American Rescue Plan Act's (ARPA) Coronavirus State and Local Fiscal Recovery Funds and $122 billion under the Elementary and Secondary School Emergency Relief Fund. Fitch anticipates this aid, the vast majority of which remains unspent and even unallocated, will provide cushion in the event of unexpected economic or public health setbacks. However, the aid is not likely to fundamentally improve most governments' operating conditions. The Infrastructure Investment and Jobs Act (IIJA) and additional federal policy measures, if enacted, are likely to benefit entities over the long term.

ACCESS REPORT

Thu 02 Dec, 2021

Fitch: U.S. State & Local Governments Search for Predictability in 2022

Fitch Ratings-New York-02 December 2021: How sustainably Federal stimulus aid is rolled out will be key for both U.S. state and local governments next year amid labor shortages, a new COVID variant and other unforeseen post-pandemic fallout, according to Fitch Ratings in its 2022 outlook report for the sector.

Fitch's outlook for U.S. states and local governments in 2022 is neutral relative to surprisingly strong 2021 underlying business conditions. "Economic growth above trend and a significant boost in resources from federal stimulus will keep states and local government finances on a positive path in 2022," said Senior Director Eric Kim. "Rising inflation and supply constraints will remain challenges."

COVID-19 remains influential and unpredictable as transmission rates and hospital caseloads can shift rapidly. This makes the new Omicron variant a potential area of concern as a new pandemic surge could cause another economic setback, complicating governments' budget outlooks. The largely unspent infusion of federal aid in 2021 provides some fiscal cushion.

The recent return of international travel should improve the outlook for major tourist draws and leisure and hospitality recovery overall in 2022. That said, state and local governments most dependent on business travel, including convention activity, will see the slowest recovery, particularly if Omicron variant infections become more widespread in the U.S.

Another area of note next year is labor shortages, which are beginning to trigger wage pressure for government employees and could in time erode expenditure flexibility for some state and local governments. "Governments with slower or stagnant revenue growth prospects may see an emerging or growing mismatch and increased pressure on budget-balancing tools," said Senior Director Michael Rinaldi.

The full report "Fitch Ratings 2022 Outlook: U.S. States and Local Governments" is available at www.fitchratings.com.

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S&P: Pension Pressure Lingers For Largest U.S. Cities Despite Federal Stimulus

Key Takeaways

- Pandemic-related federal stimulus provided funding for the cities surveyed, helping to alleviate immediate budgetary pressure, even if federal stimulus could not be used to fund pension payments.
- Funded ratios remained relatively stable, with the overall median increasing slightly, and we estimate reported funded levels will improve in fiscal 2021 given generally strong market returns to date.
- Fixed debt service and retirement costs remain high for several cities surveyed which could cause downward rating pressures over the long term.
- For most cities surveyed, pension contributions outpaced budgetary growth over the past decade.

Continue reading.

29 Nov, 2021

Valuing Water Rights in Eminent Domain: Nossaman

As water becomes scarcer in California, public agencies are looking for new sources and opportunities to provide water to their communities. When the government identifies those water sources but confronts unwilling sellers, eminent domain sometimes becomes necessary. This is currently taking place in the Antelope Valley, where the Rosamond Community Services District recently approved the adoption of a resolution of necessity to acquire water rights from agricultural land by eminent domain.

The District is facing shortages in its future water supplies and it is limited in the amount of groundwater it may use to serve its customers. The property identified is near an existing water distribution system, and the District could not locate another willing seller to secure sufficient water rights to meet the shortfall. It appears the owners plan to challenge the District's right to take the property, and if the District is successful, there will be a large fight on the value of the water rights. The District approved financing that would provide up to $17.5 million to acquire the water rights, which would be repaid through rates passed on to customers.

Valuation of water rights is a complex analysis that depends on a number of factors. In addition to determining the actual water rights in existence and their transferability, appraisers also consider:

- the quality of the water and its suitability for a variety of uses (agricultural, municipal, or drinking water);
- the costs to extract the water, including necessary improvements that must be installed to secure access;
- the reliability of the water source, including its priority in the water basin in the event of low-flow conditions; and
- alternative water supplies in the area, which dictates supply and demand and the price buyers and sellers will pay for water in the geographic vicinity.

Once those factors are established, appraisers typically use methodologies that are applied to traditional real estate valuation, such as the income approach, comparable sales approach, or cost approach. For example, in valuing water rights, an appraiser could consider the anticipated revenue stream of leasing the water, discounted to present value. Alternatively, an appraiser could look at other comparable transactions of water rights and make necessary adjustments to determine the appropriate value of the water rights. Or, under a cost approach, an appraiser could analyze the cost of developing an alternative water supply.

Rights that provide a reliable source of water, provide access to high-quality water, have minimal limits on transferability, and have scarce options for alternative water sources will ultimately fetch the highest price.

Nossaman LLP – Bradford B. Kuhn

November 30 2021

BlackRock on the Power of Public-Private Finance.

The current chapter of the Anthropocene epoch, characterized by a Code Red for humanity, demands an "all of the above" approach to climate solutions. While it is the public sector's role to lead on policy that protects society's broad interests, the recent COP26 in Glasgow, Scotland, was, as GreenBiz's Joel Makower wrote, in many ways the "business COP."

The private sector's commitment to stepping up to lead on climate solutions, or at least purporting to, is not new. But what stood out in Glasgow was the prevalence of public-private initiatives, some of which were seriously substantive.

One that caught my attention was BlackRock's Climate Finance Partnership (CFP), a public-private fund that will target investments in countries across Asia, South America and Africa that aren't part of the Organization for Cooperation and Economic Development (OECD). The Glasgow Financial Alliance for Net Zero (GFANZ) crowded headlines with its eyebrow-raising $130 trillion commitment to global transition finance — although that is a figure that Thomas O'Neill, InfluenceMap co-founder and now founder of Universal Owner, says "at best, $50.7 trillion should be removed from." That position is based on Universal Owner's analysis of the Net Zero Asset Managers Initiative, which found that the group has not committed asset managers to align themselves with climate science.

Continue reading.

greenbiz.com

By Grant Harrison

December 1, 2021

S&P: U.S. Not-For Profit Senior Living Sector's Resilient And Decisive Management Gave Ratings Stability In 2020

Key Takeaways

- Ratings remained stable despite the pandemic, with 21 affirmed and no rating or outlook changes.
- Operating losses increased as the gap between rating categories widened.
- Our rated organizations were resilient largely due to management teams reacting quickly to limit positive COVID-19 cases among both staff and residents as well as implementing other risk mitigating initiatives.

Continue reading.

29 Nov, 2021

Fitch: Inflation Could Disrupt Steadier U.S. Transportation in 2022

Fitch Ratings-New York-01 December 2021: U.S. transportation infrastructure is likely to see a firmer upward trajectory next year, though Fitch Ratings' 2022 outlook report for the sector says the path of inflation could be disruptive for some sectors.

Higher inflation will cause net income to rise as long as revenues grow at the same pace as O&M. This stands to benefit most toll roads in particular as many of them apply automatic annual rate increases indexed to inflation. Conversely, some toll roads that do not have the economic, legal, or political flexibility to raise revenues in line with inflation may experience some financial impairment.

"Seaports and toll roads have benefitted from a rapid and robust recovery in 2021, laying the groundwork for a return to more normalized growth next year," said Lehman. "Airports and cruise-focused ports still have further room for traffic recovery as remaining travel restrictions ease as expected through next year."

Airports continue to see relief of late thanks to improved leisure traffic. However, international traffic is still down by more than half as compared to pre-pandemic, while business travel is also lagging. As a result, full recovery will come quickly in some markets but also remain elusive for a segment of airports until 2024, per Fitch's projections.

Toll roads, by contrast, are much closer to full pre-pandemic recovery. Fitch expects commercial traffic to continue rising, though passenger traffic remains below 2019 levels largely due to telecommuting.

Ports will be contending with congestion challenges well into 2022. Disrupted supply chains continue to challenge operational efficiency at gateway ports, with bottlenecks leading to shipping delays exacerbated by strained logistics networks and ongoing labor shortages.

'2022 Outlook: U.S. Transportation Infrastructure' is available at 'www.fitchratings.com'.

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Fitch Ratings 2022 Outlook: U.S. Transportation Infrastructure

Fitch's Sector Outlook: Neutral Fitch Ratings' 2022 sector outlook for U.S. transportation infrastructure is neutral, indicating Fitch's expectation for broadly stable performance in 2022, relative to a mixed profile of recoveries in 2021. Robust pandemic recovery and resiliency in 2021 were especially significant in the toll road and seaport sectors, while airport traffic continues to return to pre-pandemic levels. Fitch anticipates a steadier pattern of upside activity trends in 2022, given transportation infrastructure issuers are operating close to or above pre-pandemic volumes, approaching more normalized long-term growth patterns. Airports, cruise ports and international bridge crossings have yet to recapture all of their pandemic-related losses, primarily due to ongoing travel restrictions that have an outsized impact on these systems. Fitch expects these assets will benefit from an improving operating environment in 2022, as the pandemic wanes and travel restrictions are more fully repealed.

ACCESS REPORT

Wed 01 Dec, 2021

With Ridership Still Down, Transit Agencies Rethink Priorities.

More frequent service in low-income neighborhoods, fewer buses to affluent areas, even

fare-free transit, are all on the table as transit agencies try to figure out the future, according to a new report from the Urban Institute.

Transit systems across America are facing an existential moment. Ridership remains dramatically down from its 2019 levels and budgets are only kept afloat by federal subsidies that will not continue indefinitely.

But this moment of peril for public transportation is also an opportunity to break old routines.

"Transit agencies get stuck in their service patterns, without considering the fact that those service patterns may not be reflective of what people want," says Yonah Freemark, senior research associate at the Urban Institute. "They have bus routes, in some cases, that they've had literally since they were running streetcars."

Freemark and his co-authors — Jorge González-Hermoso and Jorge Morales-Burnett — wrote a lengthy report for the American Public Transportation Association (APTA) on how an array of transit agencies are planning for the post-pandemic future.

governing.com

December 3, 2021 • Jake Blumgart

Substantial PFAS Funding in Infrastructure Act Flows Towards Protecting Water and Wastewater Systems.

The Infrastructure Investment and Jobs Act ("IIJA") allocates $10 billion in new government funding to address per- and polyfluoroalkyl substances ("PFAS") and emerging contaminants that increasingly challenge the nation's water and wastewater systems.[i]

Ordinarily, such funding requires matching or cost-sharing from the state. But the IIJA's PFAS funding is awarded as a grant, loan with the entire principal forgiven, or combination of the two. This grant funding provides states and water systems with additional resources to address PFAS impacts to their water sources

This third article in our series on the IIJA outlines which water providers and other communities are eligible for the Act's new water-focused funds, how they can receive funding, and the implications of such funding.

Public water systems; public, private, and nonprofit entities developing water infrastructure projects; and privately- and publicly-owned community water systems can access this funding through their individual state programs. This funding distribution includes:

- $5 billion to address emerging contaminants for small and disadvantaged communities, distributed to improve drinking water quality under the Safe Drinking Water Act ("SDWA");
- $1 billion for wastewater and stormwater infrastructure projects under the Clean Water State Revolving Funds ("Clean Water Funds") under the Clean Water Act ("CWA"); and
- $4 billion for community water systems to upgrade drinking water treatment, distribution, and replacement of contaminated sources under the Drinking Water State Revolving Funds ("Drinking Water Funds") of the SDWA.

Continue reading.

Marten Law LLP – Jeff B. Kray, Jessica K. Ferrell, Sara V. Cloon and Martha H. Geyer

December 1 2021

EPA Selects 39 Waterworks Projects to Apply for Billions in Financing.

The agency is teeing up projects for a new round of loans under a low-cost borrowing program for water and sewer infrastructure

Local governments, agencies and utility companies behind 39 major water and sewer projects in states across the U.S. can move ahead applying for billions of dollars in financing through a federal program that provides low-cost loans for waterworks infrastructure, the Environmental Protection Agency said Friday.

The loans would be available under the agency's Water Infrastructure Finance and Innovation Act program, or WIFIA for short. EPA estimates that, as funds become available, $6.7 billion in financing will flow to projects worth upwards of $15 billion in 24 states. WIFIA is designed to support regionally and nationally significant projects.

EPA emphasized that 14 of the projects include components meant to help infrastructure better withstand the effects of extreme weather and climate change, and that many also include elements involving cybersecurity and water reuse.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

DECEMBER 3, 2021

How States Can Best Use Federal Fiscal Recovery Funds: Lessons From State Choices So Far

Most states have started using their share of the $195 billion Fiscal Recovery Funds (FRF), created under the federal American Rescue Plan to help states and localities address the pandemic's harmful effects. Our review of these spending decisions shows that many states are using these funds constructively: to offset declines in their revenue collections, to address the health, economic, and fiscal impacts of the pandemic, and to start new long-term investments to address racial and economic inequities. Decisions in some states are not constructive. All offer important lessons for how states should use the remaining $90 billion of these funds, which will be critical both to addressing the pandemic's ongoing damage and to putting states' economies on a path toward a strong recovery.

States are making substantial progress in using FRF, our review shows. As of early November 2021, some 39 states, the District of Columbia, and Puerto Rico have appropriated $105 billion. (See

Figure 1.) That is 53 percent of the full $198 billion set aside for them, and 68 percent of the $155 billion distributed to them in 2021 (the rest will be in 2022). Among states that have allocated funds, the median state has committed 53 percent of its full allocation. Of the 11 states that have not — often because funds became available after (or very late in) their legislative session — most are expected to begin making spending decisions next year, as part of their budget process. States have until the end of 2024 to fully obligate their FRF, and until 2026 to complete their spending.

States have tremendous flexibility over how they use FRF. The most substantial use of these funds to date has been to replace state revenues that fell below projected levels as the pandemic pushed state budgets out of balance. This use has been important, because states must balance their budgets every year, even during economic downturns when demands for social services rise and revenue collections decline, for instance through lower sales tax and income tax collections. The FRF used to replace state revenues helped sustain state funding for schools, health care, and other services and avoided deep cuts to these services during the pandemic, including by minimizing layoffs for teachers and other public employees.

[Continue reading.]

CENTER ON BUDGET AND POLICY PRIORITIES

NOVEMBER 29, 2021 | BY ED LAZERE

[Muni Impact of US Infrastructure Bill Could Prove Longer Term.]

While the new US infrastructure investment bill didn't have any initiatives directly targeting the municipal bond market, there are still implications for munis in the longer term, according to our Municipal Bond Director of Research Jennifer Johnston. She explains the ramifications for investors in the space.

On November 15, 2021, US President Joe Biden signed into law HR3684, the Infrastructure Investment and Jobs Act. This bipartisan infrastructure bill includes $1.2 trillion of federal spending over the next five years. Of the $1.2 trillion, $550 billion is new spending, while the remainder will fund the reauthorization of the Highway Trust Fund. The final bill did not contain certain municipal bond market-related initiatives such as advance refunding, Build America Bonds (BABs) or elimination of the state-and-local tax (SALT) deduction cap.

The $550 billion in new spending is spread out over a number of transportation subsectors. The largest spending categories include $110 billion for roads and bridges, $73 billion for electric grid infrastructure, $66 billion for rail, $65 billion for broadband projects and $55 billion for water infrastructure. Moneys will be allocated using various formulas and distribution methods to states, local governments and agencies that will ultimately determine how the money is spent.

[Continue reading.]

advisorperspectives.com

by Jennifer Johnston of Franklin Templeton Investments, 12/1/21

A Look at How 150 Governments are Planning to Use ARPA Funds.

A new online dashboard offers insights into what cities and counties intend to do with the federal pandemic aid.

For those interested in how local governments across the U.S. intend to use billions in pandemic aid provided under the American Rescue Plan Act, a new online tool released Thursday is worth taking a look at.

Good government nonprofit Results for America and policy research firm Mathematica created what they're calling the American Rescue Plan Data and Evidence Dashboard. It presents information gleaned from reports 150 cities, counties and tribes have filed with the federal government outlining their spending plans for ARPA allotments.

"The thing we've heard from our communities, our cities and counties, has been: What are others doing? There's a huge network of people who are committed to using this money effectively to both build out their own capacity and deliver real results for residents," said Zachary Markovits, vice president of local government at Results for America and managing director for the What Works Cities initiative.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

DECEMBER 2, 2021

TAX - OHIO

State ex rel. Pike County Convention and Visitor's Bureau v. Pike County Board of Commissioners

Supreme Court of Ohio - November 16, 2021 - N.E.3d - 2021 WL 5313119 - 2021-Ohio-4031

County convention and visitor's bureau brought action against county board of commissioners and county auditor, seeking writ of mandamus compelling board and auditor to disburse to bureau the proceeds of a county-imposed sales tax on hotel lodging.

The Supreme Court held that:

- Bureau's claim was cognizable in mandamus;
- Board had discretion to redirect the tax proceeds to new entity;
- Board did not abuse its discretion in redirecting tax proceeds to new entity; and
- Bureau failed to establish clear legal right to retrospective monetary relief.

County convention and visitor's bureau's claim against county board of commissioners and county auditor, seeking disbursement to bureau of proceeds of county-imposed sales tax on hotel lodging based on statute authorizing the tax, was cognizable in mandamus; bureau's complaint sought to compel rather than prohibit official action, even though the requested relief would, in effect, prohibit the enforcement of certain resolutions of the board.

County board of commissioners, under statute authorizing tax on lodging, had discretion to redirect from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging; other than prescribing a duty on board to earmark a residual percentage on tax proceeds for "the convention and visitors' bureau operating within the county," the statute said nothing more concerning the recipient of the funds, and the absence of statutory guidance concerning how an entity was designated to receive tax revenue was to be read as a grant of discretion on that point.

County board of commissioners did not abuse its discretion in redirecting from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging, precluding bureau's claim for mandamus relief ordering board to disburse the proceeds to bureau prospectively; board explicitly enacted resolution redirecting the proceeds to new entity in response to documented findings of financial negligence by bureau, resolution referred to the findings as basis for the action taken, and period of more than a year between publication of the findings and passage of the resolution did not establish an arbitrary or unconscionable attitude on the part of the commissioners.

County convention and visitor's bureau failed to establish a clear legal right to retrospective monetary relief with respect to proceeds of county-imposed sales tax on hotel lodging allegedly withheld unlawfully or redirected by county, in bureau's mandamus action; resolution of county board of commissioners redirecting the proceeds to another entity was not an abuse of discretion under statute authorizing tax on lodging, and even if an earlier resolution of the board improperly withheld proceeds from the bureau, the bureau no longer qualified as entity designated to receive the proceeds under the statute in light of subsequent actions of the board.

Cities Tap Federal Relief Aid to Reward Workers With Bonuses.

Tens of thousands of U.S. public employees stand to benefit as local officials use $350 billion of federal virus aid for extra pay.

U.S. states and cities are tapping an enviable war chest as they fight to stop a four-month slide in public-sector employment and reward workers for their efforts during the pandemic.

From California to Kentucky to Massachusetts, dozens of cities, counties and state governments are using some of the $350 billion they received from the Biden administration's American Rescue Plan to shower extra pay on workers, especially those on the front lines in areas like public safety, health and education. Tens of thousands of public employees stand to receive a financial boost, at a time when an increasing number of Americans are quitting their jobs.

The bonuses are a bid to combat a wave of retirements and resignations that are complicating municipalities' efforts to rebuild their workforces. Despite an increasingly rosy fiscal outlook, state and local payrolls are still down 951,000 jobs from February 2020, after dropping from August through November, Labor Department figures showed Friday.

Continue reading.

Bloomberg CityLab

By Amanda Albright

December 3, 2021

Rating Muni Bonds on ESG and Impact.

Are all municipal bonds sustainable and impactful? Most investors would say yes.

However, just as all businesses are not profitable, not all muni bond issuers and issues are highly sustainable. Some are leaders, some are laggards. Many achieve their mission, but enough lag to distinguish the overall impact — teaching kids, improving patient health and citizen well-being.

If you got sick right now, would you care which hospital you go to? The best hospitals achieve better patient outcomes, with fewer returns for the same condition, while managing with fewer violations.

Do parents seek out the best schools for your kids? Of course they do — some school districts provide students with more teachers per student, higher allocations to the classroom and free school lunches to serve lower-income students.

Across muni-bond sectors, there are more than 200 data-driven metrics and 5 million annual data points to measure performance. VanEck and HIP Investor have partnered to track the overall impact and sustainability of 122,000 entities that could benefit from muni bonds.

Continue reading.

etftrends.com

By Paul Herman

CEO & Founder HIP Investor

DECEMBER 5, 2021

Separate But Unequal: How Tribes, Unlike States, Face Major Hurdles to Access the Most Basic Public Finance Tools

Economic development benefits communities through job growth, higher standards of living and improved subjective well-being. Fiscal Capacity, which allows governments to deliver programs and services such as health care, education, workforce development and law enforcement, is also a product of growing economies. As a result, state and local governments use an artillery of public finance tools such as subsidized borrowing and tax incentives to spur development. Consistently overlooked and largely underappreciated, the responsibilities of tribal governments mirror those of state and local governments. Yet, unlike these sub-national governments, tribal governments face hurdles when accessing even the most basic forms of public finance tools. This lack of parity is especially harmful today as recent research shows that the COVID-19 pandemic has crippled tribal government revenues and disproportionately impacted American Indian and Alaska Native age-adjusted mortality and prime-age employment. this short article, we summarize three distinct ways in which tribes have been shut out of tax-based economic development tools that are readily available to state and local governments.

State and local governments use sizable amounts of tax-free debt obligations (i.e, municipal bonds) to supply public goods such as highways, bridges, and parks along with private goods such as hotels, golf courses, and sports stadiums. In addition, these governments can issue non-taxable [i] which let the benefits of low-cost borrowing flow directly to the private sector — provided that these bonds are used on specific projects such as airports, educational facilities, and affordable rental . These bonds benefit the public by building economic infrastructure without raising taxes.

Continue reading.

The Brookings Institution

by Matthew Gregg

December 3, 2021

More Than Fines and Fees: Incorporating Equity into City Revenue Strategies

ABSTRACT

In the wake of the COVID-19 pandemic, city leaders are working to tackle structural inequities in access to wealth and opportunity. An infusion of federal dollars from the Infrastructure Investment and Jobs Act and American Rescue Plan Act provides an opportunity to rethink past budget choices. This brief describes how city leaders are integrating equity into revenue structures. Our review suggests that cities should consider equity in both processes and outcomes, use data- and community-driven strategies to track progress and routinize evaluations, and include in-kind resources in their assessments. Federal, state, and county governments can also design intergovernmental grant and shared-revenue programs to prioritize equity.

Full Report

Tax Policy Center

by Aravind Boddupalli, Tracy Gordon, Lourdes Germán

Dec 1, 2021

The Outlook For Municipal Markets (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Markets, has the latest news on municipal markets around the country. Hosted by Matt Miller and Taylor Riggs.

Listen to audio.

Bloomberg Radio

Dec 03, 2021

Pot Taxes May Yield $12 Billion for States by 2030 Says Barclays.

- **Legal weed will blunt budget pain after federal aid runs out**
- **California raised about $1 billion in pot revenue in 9 months**

When U.S. states and municipalities burn through their federal coronavirus relief money, taxes on legal weed will help blunt the budget pain.

Cannabis tax revenue generated more than $2 billion in the U.S. last year and that could grow to $10 billion to $12 billion for states by 2030, exceeding tax revenue from alcohol, according to municipal-bond strategists at Barclays Plc. This year, five states–New York, New Jersey, Connecticut, Virginia and New Mexico legalized recreational pot, bringing to 18 the number of states enacting law to regulate and tax cannabis for adult use.

"We'll have some long lasting consequences of the pandemic and you'll need to make money up somewhere," said Mikhail Foux, Barclays head of municipal strategy.

For now, U.S. municipalities are swimming in cash. States and cities collected $350 billion from the Covid-19 stimulus package to spend on everything from subsides for low income renters to pay increases for teachers. They also plan to fund hundreds of millions of dollars on projects like broadband and water and sewer upgrades — and that's before they get another massive infusion of cash from the $550 billion infrastructure package approved last month.

Municipalities must commit the stimulus money by 2024, and spend it by 2026. And when the federal money's gone, municipalities will need to find new revenue to pay for ongoing programs they funded with one-time aid.

Legal sales of cannabis totaled $17 billion in 2020 and should grow to as much as $27 billion this year, according to Barclays. By 2030 sales should reach about $80 billion, the London-based bank estimates.

California took in almost $1 billion in cannabis tax revenue in the first three quarters of 2021, a 21% increase over the same period the prior year. California may bring in $1.7 billion in cannabis revenue by 2026, while New York, New Jersey and Connecticut could generate as much as $2 billion, Barclays estimated.

There's more growth potential in populous states like Florida and Pennsylvania that haven't yet legalized recreational weed.

Bloomberg Politics

By Martin Z Braun

December 3, 2021

Illinois's Cost of Debt Falls as Chicago Preps New Bond Sales.

- **State's credit ratings rise with federal aid, higher revenue**
- **Drop in Treasuries helping muni deals this week: Lord Abbett**

Illinois's $400 million municipal bond sale Wednesday is the first in a string of sales from issuers in the Land of Lincoln this month as the state's cost to tap the $4 trillion market has shrunk following an improved outlook on increased revenue and billions in federal aid.

"Illinois was able to get much improved spreads in rates compared to where they were a year ago based upon their more positive outlook and the strong demand for incremental yield in the market right now," said Dan Solender, director of tax free fixed income investments for Lord, Abbett & Co., which holds $36 billion in muni assets including Illinois debt. Deals this week also are benefiting from a drop in Treasuries, he said.

The state sold $400 million in tax-exempt bonds through a competitive deal and saw the penalties over benchmark municipal securities drop sharply from a year ago, according to data compiled by Bloomberg. Morgan Stanley purchased one $200 million series with spreads ranging from 17 basis points for debt maturing next year to 52 basis points for bonds due in 2031 with 5% coupons. Barclays bought the remaining bonds with spreads ranging from 54 basis points for debt with a 5% coupon maturing in 2032 to 116 basis points for bond due in 2041 with a 3% coupon.

Around this time last year Illinois paid much more to borrow from the muni market. In October 202O, a competitive tax-exempt sale by the state drew spreads ranging from 97 to 294 basis points. At that time, Illinois was feeling pressures from the pandemic layered on top of years of self-inflicted financial woes.

Illinois was the only state to borrow from the Federal Reserve's Municipal Liquidity Facility last year and did so twice as its costs in the muni market surged. It was facing the threat of its credit rating falling to junk after voters rejected a shift from its flat income tax rate to a graduated levy. Long-term problems included almost no money in its rainy day fund, a roughly $140 billion unfunded pension liability and billions more in unpaid bills.

Illinois has seen a vast improvement in its financial outlook over the last year. The state expects a bigger surplus this fiscal year and smaller gaps in the next four annual budgets thanks to a quicker than expected recovery in revenues and billions in federal aid. In mid 2021, Illinois also received upgrades from S&P Global Ratings and Moody's Investors Service, the first in more than 20 years, while Fitch Ratings boosted its outlook to positive from negative. The state also has paid off $2.3 billion of the total $3.2 billion it borrowed from the Fed.

"The results of today's sale really reflect the improving credit story for the state as well as the supply demand mismatch as we round out the year," said Dora Lee, director of research for Belle Haven Investments, which holds $15.7 billion in muni assets. "We expect the Chicago deals next week to benefit from the credit improvements at the state level since the two are so interconnected."

Amid strong demand from investors, other issuers from Illinois are also expected to come to market this month. The planned sales include a $600 million deal Thursday from the Illinois State Toll Highway Authority and $270 million from the city of Chicago next week, according to bond documents. Chicago's Sales Tax Securitization Corp. also is slated to sell about $981.5 million in second lien bonds as well, according to filings.

Bloomberg Markets

By Shruti Singh

December 1, 2021, 12:43 PM PST

— With assistance by Danielle Moran

[Municipal Bonds on Track to Break Three-Month Losing Streak.]

- **Munis have returned 0.67% this month, beating Treasuries**
- **Omicron variant shows little impact on muni market so far**

Municipal bonds are on track to snap a three-month losing streak as investors continue to pour cash into tax-exempt debt and as yields have stabilized after reaching their highest levels of 2021.

State and local government debt has returned 0.67% month to date, beating a 0.55% gain in Treasuries and the 0.2% decline in U.S. corporate debt, Bloomberg index data show.

November has been busy for fixed-income markets with the Federal Reserve's tapering announcement, passage of President Joe Biden's infrastructure package and the emergence of a new Covid-19 variant that spurred a brief flight to safety Friday in Treasuries. Still, munis have remained expensive, bolstered by generally strong local-government financial performance.

"Municipals were much more resilient during November than their taxable counterparts," said Craig Pernick, senior managing director at Chevy Chase Trust. "Fund flows remain really high, maturities are still heavy and the calendar is fairly light."

While cash has flowed into municipal-bond mutual funds for 38 straight weeks, it had eased to almost a trickle in October. It's surged back since then, with $720 million put in during the week ended Nov. 24 and $1.4 billion the week before.

Municipal issuers plan to power ahead with $16.6 billion of sales in the coming month. Illinois plans to sell $400 million of general obligation bonds this week. California's Golden State Tobacco Securitization Corp. is scheduled to issue $4.2 billion of tobacco settlement asset-backed bonds in early December.

CreditSights expects at least $38 billion of redemptions in December, which would ease pressure on pricing.

"There is a really attractive new issue calendar, and that tends to motivate investors," said Patrick Luby, a municipal strategist at CreditSights. "The market is in fairly good footing for the next couple of weeks."

Bloomberg Markets

By Nic Querolo

November 29, 2021, 10:44 AM PST

[Junk to Drive 2022 Muni Supply to Record $500 Billion.]

- **Minimum-denomination deals, a proxy for junk, are on the rise**
- **Professionals now dominate market, and they hunger for yield**

Here's my call for 2022: U.S. states and local governments will borrow more than $500 billion in the municipal-bond market for the first time. You can credit investors' taste for junk.

I am presuming here that any new coronavirus variants don't prove to be dangerous enough to trigger further economic restrictions and the kind of severe market volatility that leads governments to rethink borrowing plans.

This year, issuers have sold $425 billion of long-term municipal debt, and my rough calculation places them on track to sell about $450 billion, just shy of the record of over $455 billion in 2020, data compiled by Bloomberg show.

Wall Street forecasts compiled by my colleague Danielle Moran show the average estimate is for about $470 billion of muni issuance in 2022, although projections range from $420 billion to $550 billion. I predict we'll top $500 billion, and I expect muni junk will move the needle — unrated, speculative deals sold only to qualified investors in minimum denominations of $100,000, $250,000 and $500,000.

The key reason I anticipate this boom is because the municipal market is becoming more professional, and those buyers hunger for yield. In 2022, I expect supply to catch up with demand. Again, this assumes the new variant doesn't suppress issuance, a risk Municipal Market Analytics laid out this week.

To get a sense of where we're going, it's useful to see where we've been. The chart above shows the history of the junk muni market through the annual volume of high-denomination transactions. Issuance didn't hit the double-digit billions until the 1990s, and exploded in the 2000s, reaching $98.2 billion in 2008, or around 27% of the $362.8 billion in munis sold that year.

The financial crisis quashed demand for risky stuff. Junk issuance ultimately dropped to about $17 billion in 2015. It started to rebound the next year, and the 2021 tally stands at about $35 billion. If it finishes the year at $37 billion, — the most since the 2008 boom — that's only 8% of the total of the $450 billion that I estimate we were on pace to achieve before the latest market turbulence.

So I expect the market to continue on the current trajectory, assuming no interruption to the present cycle of easy credit, which is emboldening developers to take on all manner of endeavors.

These kinds of deals typically finance risky projects like charter schools, recyclers, hangar operators at airports, minor-league stadiums, hotels, museums, theme parks and real estate projects that are way out there.

Pro Shift

And developers can typically have confidence that they'll find funding in the muni market. As I say, the junk resurgence is happening in large part as the market is becoming more professional.

As Patrick Luby of CreditSights wrote, "individuals have shifted from direct ownership of individual bonds to indirect ownership via mutual funds, ETFs and CEFS," referring to exchange-traded and closed-end funds. He continued, "The nearly stagnant level of individual bond holdings implies that some (perhaps most) growth in muni Separately Managed Accounts has come from the conversion of self-directed portfolios."

Federal Reserve data show that the household sector owned $1.88 trillion of municipal securities in the second quarter, down from $1.92 trillion at the end of 2020. Cumberland Advisors this month cited a Citigroup Inc. estimate that separately managed accounts may comprise almost $800 billion of this.

Meanwhile, of course, mutual funds continue to grow, controlling $952 billion of the $4 trillion in outstanding munis, according to Fed data. Closed-end funds account for $97 billion and ETFs $76 billion.

Seeking Yield

These are the customers who want yield, and they're not finding it in the plain-vanilla tax-backed munis so beloved by Mom and Pop investors. The BVAL 10-year top-rated benchmark yields around 1.05%, well below its five-year average.

Professional buyers want quirky, idiosyncratic deals that offer a big yield premium. High-minimum denomination deals offer yields hundreds of basis points over triple-A. The question is: For how long? The offering documents on junk deals usually warn buyers that their entire investment is at stake.

A couple more caveats to my $500 billion prediction. I'm not counting on tax-exempt advance refundings or a new version of Build America Bonds being restored to the Build Back Better legislation. Nor am I including munis sold with corporate cusips in my total.

Bloomberg Markets

By Joseph Mysak Jr

December 1, 2021, 8:00 AM PST

— With assistance by Danielle Moran

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

Fortress-Backed Rail Gets Nod to Sell $1 Billion of Muni Debt.

- **Florida agency approves Brightline's request to fund expansion**
- **Service resumed last month after suspended since March 2020**

Brightline Holdings, the train company backed by Fortress Investment Group, on Friday won the authority to sell $1 billion of tax-exempt private activity bonds to finance an extension of its Florida line that would quadruple its current operating length.

The decision by the board of the Florida Development Finance Corp., the municipal agency that gives private entities access to low-cost financing, clears the way for the company to first issue short-term escrowed debt this month, which won't be based on the project's risks. The company will then remarket the securities after going back to the board for final approval. That offering will test investors' faith in the passenger railroad, which will extend operations to Tampa from Miami for a total of 320 miles (515 kilometers).

The country's first new privately financed intercity passenger rail in a century, launched in 2018 along Florida's east coast, missed passenger and revenue forecasts even before the onset of the Covid-19 outbreak. Service resumed last month between Miami and West Palm Beach after stopping in March 2020 for the pandemic. Construction continued on an expansion to Orlando, which is expected to wrap up at the end of next year.

About 70% of Florida's population will have access to the line once it ends in Tampa, Brightline Chief Executive Officer Michael Reininger told the board Friday. "It will become the most powerful alternative transportation system in the country," he said.

Most of the proceeds of the new debt will go to building capacity for the line to Orlando, with about $20 million going toward design and engineering for Tampa, Brightline Chief Financial Officer Jeff Swiatek told the board.

Brightline has previously used this financing tactic of issuing escrowed bonds and then converting the debt to fixed-rate bonds. But in what would be a first for the company, a significant portion of the remarketed securities — $650 million — could receive investment-grade ratings because the debt would be backed by a combination of upfront and annual payments Miami-Dade and Broward counties will make to Brightline in exchange for using the line for their commuter services, according to a report by PFM Financial Advisors LLC.

The smaller amount of the remarketed securities will be unlikely to earn investment-grade ratings because other cash sources such as operating revenue will back the debt, which will be subordinate, the report said.

Wider Range

The securities with an investment-grade rating would draw a wider range of buyers than the unrated debt can attract.

"Given the solid revenue stream, it's a reasonable expectation that the bonds would be attractive to a large number of tax-exempt buyers," Ryan Rosberg, senior research analyst at Nuveen Asset Management, said before the meeting.

Because of concerns raised by board member and Florida's bond finance director Ben Watkins, the board adjusted its resolution on the debt issuance by requiring Brightline to return for approval of the remarketing. Watkins said that while he supported the project, aspects of the permanent financing remain unclear. "I just can't get comfortable signing off on something when I don't know what it looks like," he said.

Brightline had already sold $2.7 billion of unrated tax-free debt for the $6 billion project. Some of the bonds have recently traded up in price amid positive developments for the project such as its re-launch. A bond due in 2049 traded Nov. 19 at an average yield of 5.3%, compared with a high of 7.75% in January, according to data compiled by Bloomberg.

Brightline also plans to sell debt for a line connecting Las Vegas to southern California.

Bloomberg Business

By Romy Varghese

December 3, 2021, 9:47 AM PST

[New York Is Set to Refinance One World Trade Center.]()

- **Agency approves bonds to redeem debt on NYC's tallest building**
- **Silverstein also plans 7 World Trade Center refinancing**

A state agency approved $700 million in bonds to refinance debt used for One World Trade Center, the tallest building in New York City, located on the site of the towers destroyed on Sept. 11, 2001.

New York Liberty Development Corp., created in 2002 to help rebuild lower Manhattan after the terrorist attacks, plans to issue the bonds this month on behalf of the Port Authority of New York & New Jersey. Proceeds will redeem securities sold in 2011 to help finance the 1,776-foot structure. Siebert Williams Shank & Co. and Goldman Sachs Group Inc. will manage the deal.

Separately, the agency approved developer Larry Silverstein's selection of Goldman to manage a $525 million refinancing for nearby 7 World Trade Center. The building opened in May 2006, the first in the new complex. Silverstein last refinanced the municipal bonds for the 52-story building in 2012. The date of the bond sale wasn't immediately available.

Market prices for trophy office buildings in lower Manhattan have suffered more than those in midtown during the coronavirus pandemic. The valuation of the World Trade Center complex and Goldman's headquarters at 200 West Street fell by about 23%, compared with a 14% median decline for landmark buildings in midtown for the fiscal year beginning July 1, according to the city's Department of Finance.

One World Trade had leased about 90% of its 3 million square feet of commercial office space as of March 31, according to an April Port Authority bond offering document. 7 World Trade Center was 95% occupied as of Sept. 30, according to a quarterly management report from Silverstein Properties.

Bloomberg Markets

By Martin Z Braun

December 2, 2021

Illinois Effort to Fix Ailing Local Pensions Faces Legal Hurdle.

- **State law mandates merging of assets for 650 funds by mid 2022**
- **No police funds have shifted assets amid pending court ruling**

A court ruling as soon as this month will help determine the fate of one of Illinois Governor J.B. Pritzker's key plans to ease the massive shortfall in local pension funds across the state.

A 2019 law championed by Pritzker would merge about 650 local police and firefighter pensions with assets topping $16 billion into two funds to cut costs and improve returns. Fixing the underfunded plans, which weigh on budgets and credit ratings of many communities statewide, is critical for Illinois's economic rebound.

The law set a June 30 deadline for the consolidation of the funds, but many of the local pensions are hesitating or even refusing to merge until they learn the outcome of litigation to block the combining. Three dozen current employees and retirees, along with 18 local retirement plans, filed a lawsuit in February in Illinois circuit court saying the consolidation violates the state constitution. A key ruling is expected as early as December, said Daniel Konicek, an attorney representing plaintiffs.

The 2019 state law was "a positive step forward for Illinois pensions," said Geoffrey Buswick, an analyst for S&P Global Ratings, noting that many smaller pension funds are chronically underfunded, which weighs on municipalities' credit quality.

"Will it work? There's no guarantee," he added.

The stakes are high for Illinois. The Land of Lincoln is the lowest-rated U.S. state even after recent upgrades, and fixing pensions is critical as it recovers from the pandemic. The state isn't obliged to bail out local retirement plans, but if municipal governments are struggling, Illinois will lag as well.

A spokesperson for Illinois Attorney General Kwame Raoul declined to comment, citing pending litigation, while spokespeople for Pritzker did not respond to emails and calls seeking comment.

Funds Wait

Five statewide systems have a total unfunded liability of about $144 billion. And the collective unfunded liability of local downstate public safety pension plans through the end of fiscal 2020 topped $13 billion, according to Illinois Department of Insurance data.

The upcoming ruling may slow or even halt consolidation. The 2019 law set up one bigger fund for police officers and another for firefighters to take over the management and investment of the combined assets, but left control over benefits and contributions with the local boards.

So far, however, the new Illinois Police Officers' Pension Investment Fund hasn't received any assets and expects to begin getting funds around March, said executive director Richard White. About 44% of the 357 downstate and suburban police funds that were supposed to be merged into the bigger pension plan haven't even responded to requests for information, White said.

The Firefighters' Pension Investment Fund has received about $2.2 billion in assets but about a quarter of would-be participants in the early tranches are not complying, said executive director William Atwood. The transfers are complicated and take time, Atwood said.

The Illinois Municipal League, which advocated for the consolidation for a decade before the law was enacted, "is confident in the legality and validity of the act, and we see no reason why the suit will render any ultimate decision from the courts otherwise," executive director Brad Cole said in an email. The two consolidated funds should be able to meet the June deadline, said Cole, who serves on the board of both but is commenting on behalf of the league.

"We are already showing savings and increased earning ability, proving the benefit that was predicted and is needed by this consolidation," Cole said.

A Relief?

Some local governments are relieved to see their plans consolidated.

Police and fire pension costs for DeKalb, Illinois, use up about 20% of general fund revenue, up from 10% in 2014, city manager Bill Nicklas said in an interview. The entire property tax levy for the city's proposed 2022 budget will go toward the two pension funds and some more revenue from sales taxes may be tapped for the retirement system payments, he said.

"Of the options that are out there, consolidation seems to be a good place to begin," Nicklas said.

But underscoring how difficult this shift is, the DeKalb Police Pension Fund doesn't agree with city officials and is listed as one of the plaintiffs in the lawsuit.

"I don't think many of us trust the government of Illinois to handle our money given their history," said Jim Kayes, president of the DeKalb Police Pension Fund board, in an interview.

Constitutional Rights

The lawsuit claims that the law takes away the plaintiffs' local authority and "diminishes and impairs the pension benefits" to which they are entitled. Illinois' constitution bans any reduction in worker retirement benefits.

In passing the law, "the Governor and General Assembly have acted in dereliction of their duties to uphold the Illinois Constitution," according to the complaint. "Plaintiffs must therefore turn to this Court to protect their rights and pensions they have earned, invested, and managed."

The state said in a filing in reply that Illinois's constitution protects the payments that retirees are entitled to, but that doesn't extend to areas like choosing the entity that manages the retirement plan.

Even amid the uncertainty that's resulting in a slowing of the process, the consolidated funds are continuing to move forward to meet the statutory requirement, according to their executive directors. The Illinois Police Officers' Pension Investment Fund is increasing its outreach to improve compliance and will respond as needed once the court rules, Executive Director White said.

"We will be in very good shape. There will be certain outliers that didn't quite make it," said Atwood from the consolidated fire fund. "It's not going to be for a lack of trying on our part."

Bloomberg Politics

By Shruti Singh

December 2, 2021, 9:26 AM PST Updated on December 2, 2021, 12:25 PM PST

U.S. Bond Funds See Higher Outflow in the Week to Dec. 1 -Lipper

(Reuters) – U.S. bond funds witnessed a surge in outflows in the week to Dec. 1 on rising prospects that the U.S. Federal Reserve will ramp up the pace of unwinding its bond purchases and will lift rates as soon as mid-2022. According to Refinitiv Lipper data, investors sold U.S. bond funds worth a net $2.16 billion, compared with their net selling of $245 million in the previous week.

Despite concerns over the Omicron coronavirus variant, the two-year U.S. Treasury yield jumped 7 basis points on Wednesday after the Fed chief said that in December the Fed will discuss whether to end their bond purchases a few months earlier than expected.

U.S. taxable bond funds witnessed net selling of $3.03 billion, that was the largest weekly outflow since early-April 2020. However, municipal bond funds attracted inflows of $1.14 billion.

U.S. short/intermediate investment-grade funds and loan participation funds witnessed outflows of $1.84 billion and $304 million respectively, while weekly inflows into U.S. inflation protected funds also dropped to a four-month low of $169 million.

However, U.S. equity funds drew $7.56 billion in net buying, their largest inflow in five weeks. Large cap funds pulled in $13.09 billion after two straight weeks of net selling, although investors sold small- and mid-cap equity funds worth $1.96 billion and $104 million respectively. U.S. growth funds attracted $621 million in net purchases after four straight weeks of outflows. However, value funds saw net selling of $2.22 billion, the biggest in six weeks.

Technology funds lured inflows for a third straight week worth $2.39 billion, although financials and industrials posted outflows of $1.51 billion and $481 million respectively.

Meanwhile, U.S. money market funds secured a net $29.27 billion in net purchases, the biggest inflow in five weeks.

By Reuters

Dec. 3, 2021

(Reporting by Gaurav Dogra and Patturaja Murugaboopathy in Bengaluru; Editing by Shailesh Kuber)

Ernesto A. Lanza Named Acting Director of SEC Office of Municipal Securities.

Washington, D.C.–(Newsfile Corp. – December 3, 2021) – The Securities and Exchange Commission today announced that Ernesto A. Lanza will serve as Acting Director of the Office of Municipal Securities (OMS). Mr. Lanza, who has served as Senior Counsel to the OMS Director since 2019, replaces Rebecca J. Olsen, who was named Deputy Chief for the Division of Enforcements Public Finance Abuse (PFA) Unit. Mark R. Zehner, who held the PFA role since July 2010, is retiring from the agency after 25 years of service.

“I look forward to working closely with Ernie on oversight of municipal securities,” said SEC Chair Gary Gensler. “This critical $4 trillion market finances local governments and the essential infrastructure of our communities, such as roads, hospitals, and schools. I thank Rebecca for her leadership of OMS since 2018 and congratulate Mark on his retirement from the SEC.”

Prior to joining the SEC in 2019, Mr. Lanza was in private practice with a focus on public finance matters related to securities law, disclosure, and market structure issues. He previously served as the Deputy Executive Director of the Municipal Securities Rulemaking Board (MSRB), where he led a number of policy initiatives, including the launch of the EMMA system. Before that, he was the MSRBs Chief Legal Officer and General Counsel. Mr. Lanza holds a J.D. from the University of Pennsylvania Law School and earned his undergraduate degree cum laude from Harvard University.

Ms. Olsen became head of OMS in September 2018 and previously served as the Offices Deputy Director, Chief Counsel, and attorney fellow. She earned a bachelor’s degree from Boston College, a J.D. from the Georgetown University Law Center and an LL.M in International Business Law from the Vrije Universiteit Amsterdam, The Netherlands.

Mr. Zehner joined the SEC in January 1997. Prior to joining the Enforcement Division, he served as Regional Municipal Securities Counsel in the SECs Philadelphia Regional Office and as an Attorney-Fellow in OMS. He received a J.D. from the University of Pennsylvania Law School and a B.A. from Dartmouth College. In 2006, he received the Stanley Sporkin Award, the agencys highest honor for enforcement staff.

Looking for Bonds? Consider Munis Amidst Volatility.

The $1.2 trillion infrastructure investment bill didn't contain any provisions for municipal bonds specifically, but the market still looks to benefit in the long term as the spending trickles out over the coming years.

President Biden signed the Infrastructure Investment and Jobs Act into law mid-November, and while it lacked any specific targeted boost to municipal bonds, the government's commitment to repairing bridges and roads and investing in trains and sewers will likely lead to growth for the municipal bond market, reports the Wall Street Journal.

As government spending starts to make its way to city and state legislatures, it often will only be partial support for a project that will require further funding from local sources. That burden falls onto cities and states, and could lead to greater bond issuance.

"In many cases the local contribution will come from municipal bonds," said Patrick Brett, head of municipal debt capital markets at Citigroup as well as the chair of the muni bond industry's self-regulating organization, the Municipal Securities Rulemaking Board.

With so many varied projects receiving funding, the odds of the need for new municipal bonds in the coming months and years is high, with improvements slated for bridges, roads, railways, water and sewerage, and more.

Seeking Tax-Free Income Amidst Volatility and Rising Rates
With current market volatility and the potential for its persistence well into next year, finding tax-free income from municipal bonds that will potentially see continued growth over the next five years could be a way to pivot for investors. The American Century Diversified Municipal Bond ETF (TAXF) offers actively managed exposure to the space.

TAXF mainly invests in municipal bonds and other debt securities, while sometimes investing in "junk bonds," or high-yield securities. The high-yield securities are rated below investment-grade, including bonds that are in monetary or technical default. The issuers typically have short financial histories or questionable credit, or else have a history of problems making interest and principal payments.

The debt securities purchased can be of any duration, with the average duration of the portfolio varying depending on the interest rate forecast.

The fund primarily seeks current income but also works to increase capital appreciation based on interest rate fluctuations and credit upgrade potentials. When investing in a security, the portfolio manager looks at the current and predicted interest rates, the credit of an issuer, comparable alternatives, the overall market condition, and other factors.

A breakdown of current investments by states includes a 14% allocation to California, a 10% allocation to Texas, 9% to New York, 6% to Florida, and 5% to Illinois.

TAXF carries an expense ratio of 0.29% with monthly distributions.

ETF TRENDS

by KARRIE GORDON

DECEMBER 2, 2021

What Happens if Muni Bonds Stop Being Tax-Free?

The 2017 Tax Cuts and Jobs Act was a wake-up call, one analyst says

For decades, everything from sewer systems to schools to stadiums have been built by debt issued by state and local governments. Municipal bonds are a mainstay of the American economy: They level the playing field between tiny towns and massive state economies, letting every issuer reach investors who want a steady stream of income that's also tax-free.

But what if tax-free bonds stopped being tax-free?

One analyst thinks the market should be more prepared for such a shift. "I don't see an immediate threat," said Tom Kozlik, head of municipal research at HilltopSecurities, in an interview with MarketWatch. But in an era where deficit reduction may start to resonate more for lawmakers even as low taxes reign supreme, Kozlik says the muni market needs to be vigilant.

Continue reading.

MarketWatch

By Andrea Riquier

Dec. 2, 2021

California Scheming.

Luxury apartment or essential housing? How America's most notorious junk municipal bond peddlers are getting rich off California's affordability crisis.

Among California real estate developers, Jordan Moss has an exceptionally big heart. His Marin County firm, Catalyst, is dedicated to developing affordable housing—no small challenge in a state in which small one-bedroom apartments routinely lease for more than $3,000 a month and rents can climb at double-digit rates annually.

"I quickly came to the conclusion that I don't have the temperament for that business, when you're waiting years and years to find out if you're going to get an allocation of [low-income housing tax] credits and bonds, and all the other things needed to make that sausage," says Moss, a former UC Davis basketball player.

But in 2019, he partnered with a group of municipal-bond wizards and has since acquired 14 fully occupied luxury apartment buildings in some of California's most expensive Zip codes—places like Sausalito, Larkspur and Huntington Beach. Even better, because he promises to turn these buildings into so-called "essential" or "workforce" housing, his deals were 100% financed by $2.5 billion in tax-exempt municipal bonds, mostly courtesy of a little-known governmental entity he helped create: the California Community Housing Agency (CalCHA).

Continue reading.

Forbes

by Matt Schifrin with Isabel Contreras and Rachel Sandler

Dec 2, 2021

Fitch: Home Price Increases Have Varied Effect on Property Taxes

Fitch Ratings-New York-03 December 2021: Local governments in some states are better positioned to benefit in the near to medium term from strong home price growth, says Fitch Ratings. The potential revenue impact depends on a municipality's property tax regime, home price trends and the historical relationship between home price trends and property taxes, which reflects tax policy and government action. Fitch ranked states according to the possible tax revenue impact based on an index of these three factors.

Home price growth has surged in all states but has been uneven. Municipalities in states near the top of the ranking may see a boost to property taxes because of higher home price growth, the contribution of property taxes to total revenues and tax policies that capture this growth.

Property taxes are a smaller portion of overall tax revenues for municipalities in states ranked near the bottom. These states have had less exuberant home price growth, and there is little or no correlation between historic property taxes and house prices, partially due to atypical valuation cycles, rate limits and policy choices.

Continue reading.

ESG Relevance Scores in Credit Ratings vs Sustainable Fitch ESG Ratings in Financial Institutions: Fitch Webinar

15 December 2021 | 3:00 – 4:00pm CET

Join us for a discussion and introduction to our new ESG Ratings from Sustainable Fitch.

Maria Bazhanova, Associate Director in the Sustainable Fitch team will provide you with an introduction to the ESG Ratings and Janine Dow, Senior Director, Sustainable Fitch, will introduce you to the differences between the established ESG Relevance Scores in Credit Ratings and the new ESG Ratings in Financial Institutions.

KEY TOPICS

ESG Ratings:

- Introduction to Sustainable Fitch´s ESG Ratings and the underlying methodology.

ESG Relevance Scores in Credit Ratings vs. ESG Ratings:

- ESG Relevance Scores in Credit Ratings
- From Credit Ratings to ESG Ratings: Difference between the ESG Relevance Scores in Credit Ratings vs ESG Ratings

The discussion will be followed by a Q&A session. Please send any questions in advance to Christiane Treutel: christiane.treutel@fitchratings.com.

We hope you can join us for this event.

REGISTER NOW

CCCFA Issues California's First Municipal Clean Energy Project Revenue Bonds Worth over $2 Billion

The bonds will support community clean energy goals across the counties of Alameda, Contra Costa, Marin, Napa, San Joaquin, Santa Clara, and Solano

OAKLAND, Calif. and SAN RAFAEL, Calif. and SUNNYVALE, Calif., Dec. 6, 2021 /PRNewswire/ — Three Community Choice Aggregators (CCAs) – East Bay Community Energy, MCE, and Silicon Valley Clean Energy – have issued California's first ever municipal non-recourse Clean Energy Project Revenue Bonds through the California Community Choice Financing Authority (CCCFA). Two separate bond issuances, valued at over $2 billion for thirty-year terms, support the purchase of clean electricity to serve over 2.5 million residents and businesses across the Bay Area and Central Valley.

The two Clean Energy Project Revenue Bonds prepay for the purchase of over 450 megawatts of clean electricity – enough to power 163,000 homes and reduce 765,000 metric tons of greenhouse gas emissions annually. These transactions will reduce renewable power costs by almost $7 million annually for the first 5-10 years. For decades, municipal utilities have used the prepayment structure as an industry standard practice to reduce costs for the purchase of natural gas. For the first time, these Revenue Bonds apply this structure to the purchase of clean electricity.

"CCAs are known for being innovative and nimble in our efforts to provide our community with electricity from cost-effective, clean sources," said Girish Balachandran, CEO of Silicon Valley Clean Energy. "For SV Clean Energy, we are working to advance innovative decarbonization solutions across sectors, and in this case, we have applied a new approach to how we finance our clean power projects, furthering the financial savings enjoyed by our customers."

A Clean Energy Project Revenue Bond is a form of wholesale electricity prepayment that requires three key parties: a tax-exempt public electricity supplier (the CCA), a taxable energy supplier, and a municipal bond issuer. The three parties enter into long-term power supply agreements for zero-emission clean electricity sources like solar, wind, geothermal, and hydropower. The municipal bond issuer – in this case, CCCFA – issues tax-exempt bonds to fund a prepayment of energy that is to be delivered over thirty years. The energy supplier utilizes the bond funds and provides a discount to the CCA on the power purchases based on the difference between the taxable and tax-exempt rates. This discount is historically in the range of 8-12%, and minimum discounts are negotiated for each transaction.

The first of these bonds, which was issued by CCCFA to the benefit of East Bay Community Energy and Silicon Valley Clean Energy, was underwritten by Morgan Stanley. It successfully generated nearly $1.5 billion in proceeds, after having received an investment grade “A1” rating from Moody’s and a “Green Climate Bond” designation from Kestrel Verifiers, making it the largest ever issuance of prepayment bonds for clean electricity.

“These two prepay transactions are a fantastic representation of CCAs’ position at the leading edge of the clean energy transition,” said Nick Chaset, CEO of East Bay Community Energy and Chair of CCCFA. “While it took a lot of time and attention to apply the structure to electricity, issuing these green bonds exemplifies the commitment and competitive edge we bring as an industry. By leveraging a decades-old process available for natural gas procurement savings and making it work for clean electricity, we’re picking it up and repurposing it to meet the needs of today.”

The second transaction, issued by CCCFA to the benefit of MCE, was underwritten by Goldman Sachs. The very successful bond sale produced approximately $700 million in bond proceeds and generated significant investor demand. The issue received an investment grade “A2” rating from Moody’s Investors and a “Green Climate Bond” designation from Kestrel Verifiers.

“MCE began exploring prepayment bonds three years ago as a pathway to reduce the cost of our renewable energy portfolio,” said Dawn Weisz, CEO of MCE. “This transaction will help us deliver on our promise of cleaner power, community reinvestment and competitive rates. We are pleased to pass these cost savings on to our customers.”

About CCCFA: The California Community Choice Financing Authority (CCCFA) was established in 2021 with the goal to reduce the cost of power purchases for member community choice aggregators (CCAs) through pre-payment structures. The founding members of CCCFA include Central Coast Community Energy, East Bay Community Energy, MCE, and Silicon Valley Clean Energy. CCCFA is a Joint Powers Authority which can help member CCAs save up to 10% or more on power purchase agreements, helping reduce costs for ratepayers and increase available funding for local programs. Learn more at CCCFA.org.

About EBCE: EBCE is a not-for-profit public agency that operates a Community Choice Energy program for Alameda County and fourteen incorporated cities, serving more than 1.7 million residential and commercial customers. EBCE initiated service in June 2018 and expanded to the cities of Pleasanton, Newark, and Tracy in San Joaquin County in April 2021. As one of 19 community choice aggregation (CCA) programs operating in California, EBCE is part of the movement to expedite the climate action goals of their communities and those of California. EBCE is committed to providing clean power at competitive rates while reinvesting in its local communities. For more information about East Bay Community Energy, visit ebce.org.

About MCE: As California’s first Community Choice Aggregation Program, MCE is a groundbreaking, not-for-profit, public agency that has been setting the standard for energy innovation in our communities since 2010. MCE offers renewable power at stable rates, significantly reducing energy-related greenhouse emissions and enabling millions of dollars of reinvestment in local energy programs. MCE is a load-serving entity supporting a 1,200 MW peak load. MCE provides electricity service and innovative programs to more than 540,000 customer accounts and more than one million residents and businesses in 37 member communities across four Bay Area counties: Contra Costa, Marin, Napa, and Solano. For more information about MCE, visit mceCleanEnergy.org.

About SV Clean Energy: Silicon Valley Clean Energy is a not-for-profit, community-owned agency providing clean electricity from renewable and carbon-free sources to more than 270,000 residential *and commercial customers in 13 Santa Clara County jurisdictions. As a public agency, net revenues are returned to the community to keep rates competitive and promote clean energy programs. Silicon Valley Clean Energy is advancing innovative solutions to fight climate change by decarbonizing the grid, transportation, and buildings. For more information about Silicon Valley Clean Energy visit svcleanenergy.org.*

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- IRS Sets Releases New Rules For Private Activity Municipal Bonds.
- Infrastructure Investment and Jobs Act: Selected Changes Impacting Public-Private Partnerships
- Here's One Way to Get the Municipal Bond Market to Come Clean on Climate Change Risks.
- There Are No Municipal-Market Bond Vigilantes When It Comes To Climate Risk, This Study Confirms.
- Previewing Enhanced CUSIP Groups Feature on EMMA: MSRB Webinar
- *City of Fort Wright v. Board of Trustees of Kentucky Retirement Systems* – Supreme Court of Kentucky holds – as a matter of apparent first impression – that standard applicable to Board of Trustees of Kentucky Retirement Systems in making investments for the County Employees Retirement System (CERS) was prudent investor standard, and Board was not restricted by statute from making investments in unregulated hedge funds and private equity funds in managing CERS assets.
- And finally, Great Moments In Judicial Pronouncements is brought to us this week by *Martinez v. City of Beverly Hills*, in which the court magisterially intoned the following immortal line, "The City is aware that people sometimes walk in its alleys." So true. So wise. But let us move on to the gravamen of the complaint and play Frivolous Plaintiff Bingo! Represented by legal bottom feeders? Check. "Wearing soft-bottomed flip-flops and carrying a paper plate piled with pastries?" Uh, maybe? Tripped on a "divot" and sustained unspecified injuries? You betcha! Got slapped around by the Court of Appeal? Bingo!

ZONING & PLANNING - CALIFORNIA

People v. Venice Suites, LLC

Court of Appeal, Second District, Division 8, California - November 15, 2021 - Cal.Rptr.3d - 2021 WL 5298494

State of California brought action against apartment house owner and operator, alleging violation of Los Angeles Municipal Code (LAMC), public nuisance, unfair business practices, and false advertising.

The Superior Court granted summary adjudication in part for owner and operator, and government voluntarily dismissed remaining claims. Government appealed.

The Court of Appeal held that:

- Court of Appeal could exercise its discretion to consider government's legal argument on uncontroverted facts, raised for first time on appeal, that short-term rentals were impliedly prohibited under permissive zoning scheme;
- Residential zone not specifying length of occupancy did not implicitly prevent apartment house from being used for short-term occupancies of 30 days or less;
- Long-term occupancy requirement for apartment house could not be inferred from definition limiting transient occupancy residential structure (TORS) to occupancies of 30 days or less; and
- Zoning code expressly authorizing use of apartment house in zone for human habitation without length of occupancy restriction could not be read in conjunction with rent stabilization ordinance (RSO) or transient occupancy tax ordinance (TOT) to require long-term occupancy.

IMMUNITY - CALIFORNIA

Martinez v. City of Beverly Hills

Court of Appeal, Second District, Division 2, California - November 10, 2021 - Cal.Rptr.3d - 2021 WL 5231409 - 21 Cal. Daily Op. Serv. 11,427

Pedestrian brought action against city alleging premises liability and negligence for a trip-and-fall in alley behind law office where she worked.

City moved for summary judgment, and the Superior Court and entered judgment,. Pedestrian appealed.

The Court of Appeal held that:

- City lacked actual notice of divot on which pedestrian tripped, and
- City lacked constructive notice of divot.

City lacked actual notice of divot on which pedestrian tripped, for purposes of determining city's liability for dangerous condition in pedestrian's action against city alleging premises liability and negligence for a trip-and-fall in alley behind law office where she worked, where Court of Appeal was permitted but not required to infer that city had actual notice because city did not produce a declaration from every possible city employee who might have been in alley in past denying having seen divot, and such an inference was not reasonable, given that city had not received complaints about alley's divot in six years preceding pedestrian's accident and had not been presented with any claims or lawsuits regarding divot in preceding 15 years.

City lacked constructive notice of divot on which pedestrian tripped, which was less than two inches deep, for purposes of determining city's liability for dangerous condition in pedestrian's action against city alleging premises liability and negligence for a trip-and-fall in alley behind law office where she worked, because cost of keeping alleys as defect-free as sidewalks for foot traffic had greater cost and less benefit, given that alleys degraded faster than sidewalks due to heavy vehicle traffic while being used less than sidewalks for foot traffic, city could reasonably elect to apply less rigorous scrutiny when inspecting alleys for defects as compared with sidewalks, meaning that universe of "obvious defects" for alleys was smaller than for sidewalks.

PUBLIC PENSIONS - KENTUCKY

[City of Fort Wright v. Board of Trustees of Kentucky Retirement Systems]

Supreme Court of Kentucky - October 28, 2021 - S.W.3d - 2021 WL 5050126

City employers brought action alleging improper investments by the Board of Trustees of Kentucky Retirement Systems in its management of the County Employees Retirement System (CERS).

The Circuit Court entered declaratory judgment in favor of Board. City employers appealed. The Court of Appeals affirmed. Discretionary review was granted.

The Supreme Court as a matter of apparent first impression, held that standard applicable to Board in making investments for the CERS was prudent investor standard.

Standard applicable to Board of Trustees of Kentucky Retirement Systems in making investments for the County Employees Retirement System (CERS) was prudent investor standard, and Board was not restricted by statute from making investments in unregulated hedge funds and private equity funds in managing CERS assets.

CITY CHARTER AMENDMENT - MINNESOTA

[Samuels v. City of Minneapolis]

Supreme Court of Minnesota - November 10, 2021 - N.W.2d - 2021 WL 5227155

Petitioners sought to correct the language city council had approved for a question on the ballot for a city election.

The District Court granted the petition and enjoined city from putting the question on the ballot as then framed. City council approved revised ballot language, and petitioner moved to strike the revised question from the ballot. The District Court granted the motion. City appealed and filed a petition for accelerated review, which was granted.

The Supreme Court held that petition that proposed to amend city charter to remove language requiring a police department and to establish a new department of public safety was not so unreasonable or misleading as to preclude voters from understanding the purpose of proposed amendment, and thus proposed amendment could be placed on ballot.

Petition that proposed to amend city charter to remove language requiring a police department and to establish a new department of public safety was not so unreasonable or misleading as to preclude voters from understanding the purpose of proposed amendment, and thus proposed amendment could be placed on ballot; the essential purpose of proposed amendment was fairly communicated as it indicated the police department would be removed from city charter and a department of public safety would be established, and the ballot language was not misleading or vague as it stated the department of public safety would use a “comprehensive public health approach,” the mayor and city council would decide the “specific functions” of new department, and the new department “will not be subject to exclusive mayoral power.”

SCHOOLS - PENNSYLVANIA

[In re Formation of Independent School District Consisting of Borough of Highspire, Dauphin County]

Supreme Court of Pennsylvania - October 7, 2021 - 260 A.3d 925

Coalition of inhabitants of borough appealed an order of the Court of Common Pleas denying its petition for formation of an independent school district after the Secretary of Education determined the petition had no educational merit.

The Commonwealth Court reversed. Districts sought review.

The Supreme Court held that as a matter of first impression, Secretary of Education could consider financial implications of transfer upon quality of education provided in affected districts.

In considering petition to establish school district independent of existing district for sole purpose of having new district be absorbed into neighboring district, Secretary of Education could consider audit addressing educational impact of proposed transfer over objection that financial projections in audit were “conjectural,” where audit was entered into evidentiary record by stipulation and opponent agreed that auditor would not be required to offer witness to testify regarding its contents.

EMINENT DOMAIN - PENNSYLVANIA

[Department of Transportation v. Bentleyville Garden Inn, Inc.]

Commonwealth Court of Pennsylvania - October 1, 2021 - A.3d - 2021 WL 4483462

Pennsylvania Department of Transportation (PennDOT) condemned portion of condemnee’s property, which was adjacent to condemnee’s remaining property put to hotel use, and petitioned for appointment of board of viewers.

PennDOT subsequently appealed as excessive board’s award of $2,908,000 to condemnee. After trial on merits of PennDOT’s appeal, jury awarded condemnee $355,000, and the Court of Common Pleas denied condemnee’s motion for judgment notwithstanding the verdict (JNOV) or a new trial. Condemnee appealed.

The Commonwealth Court held that:

- Eminent Domain Code permitted consideration of hotel’s depressed value to calculate after-taking valuation of condemnee’s remaining property;
- Hotel’s loss of revenue before, during, and after PennDOT’s construction of highway exit was relevant to establish damages to condemnee’s remaining property;
- Consideration of hotel’s revenue data from more than one year after taking to determine value of condemnee’s remaining property conformed with Eminent Domain Code;
- Assumption made by PennDOT’s expert that building highway exit did not affect access or visibility to condemnee’s remaining property was not supported by record; and
- Belief that oil and gas industry was solely responsible for hotel’s revenue decline following taking was contrary to the evidence.

[Enacting President Biden's Infrastructure Bill: Opportunities in The Infrastructure Investment and Jobs Act - Jones Day]

The Situation: On November 15, 2021, President Biden signed into law a long-awaited $1.2 trillion bipartisan infrastructure bill, The Infrastructure Investment and Jobs Act ("IIJA").

The Result: The IIJA will transform the United States' failing infrastructure system with several clean energy initiatives focused on transportation, technology, and updated water systems. The funds will be distributed through a series of grant programs by the Treasury Department, presenting new funding opportunities for companies engaged in the infrastructure sector.

Looking Ahead: As soon as December 2021, dedicated highway funds will become available through private-public partnerships. However, funds for mass transit, railways, and buses will not be announced until Congress's anticipated Spending Bill for the fiscal year. Businesses engaging with physical infrastructure have many opportunities for funding available through the IIJA that will continue to be allocated over coming months.

The Road Towards Better Infrastructure

On November 15 2021, President Biden signed into the law the long-awaited Bipartisan Infrastructure Framework, The Infrastructure Investment and Jobs Act ("IIJA").

This $1.2 trillion plan will revitalize America's deteriorating infrastructure system, which leaders on both sides of the aisle have long acknowledged as a key issue. The IIJA only provides funding for physical infrastructure, unlike President Biden's previous proposals, which involved heavy investment in what he deemed "human infrastructure," including childcare, healthcare, and community programs. This bipartisan framework focuses on transportation, technology, and waterways. Businesses in the infrastructure and energy fields will have new opportunities through bonds and public-private partnerships provided by the plan.

This Commentary will review the principal sections of President Biden's agreement and potential opportunities for businesses in infrastructure, energy, and technology.

Transportation Improvements

President Biden's new agreement amounts to $550 billion in new infrastructure spending, with $312 billion going towards transportation. The transportation budget will invest $110 billion in roads and bridges, $66 billion in passenger and freight rails, and $49 billion in public transit. Fifteen billion in funds is allocated for electric vehicle infrastructure, including 500,000 electric vehicle chargers nationwide, far less than previous drafts' allocations.

The spending package also includes $89.9 billion to modernize public transit over the next five years, with $39 billion to improve accessibility for the elderly and people with disabilities, and $7.5 billion to replace transit vehicles, such as buses and ferries, with zero-emission vehicles. Significant amounts of these funds will go to major city transit systems, like New York City's, based on federal funding formulas. The package will also invest $16 billion for major projects that are too large or complex for traditional funding programs, $11 billion in transportation safety programs, and $5 billion for street repair, particularly to protect cyclists and pedestrians.

The IIJA goes beyond just cars and roads and allocates significant funds to alternative means of transport. The spending package invests $22 billion for Amtrak, $24 billion in grants for Northeast

Corridor modernization, $12 billion for grants for intercity rail service, including high-speed rail, $5 billion for rail improvement and safety grants, and $3 billion for grade crossing safety improvements. The goal of these investments is to provide a reliable alternative to flying and driving. Ports will receive $17 billion and airports will receive $25 billion to repair existing issues, reduce congestion, and to develop systems that require lower emissions.

Technological Improvements

The plan also provides $191 billion to upgrade "other" infrastructure. The spending package includes $65 billion to update and expand the power grid, to expand reliance on renewable energy, to conduct R&D on advanced electricity transmission technologies, and to implement smart electricity grids. Some of these funds will also be dedicated to research for advanced nuclear, carbon capture, and clean hydrogen projects. The spending package includes $65 billion for broadband deployment to create universal access to high-speed internet, to require providers to show families cheaper internet service options, and to subsidize access to internet service for low-income households.

Waterway Improvements

The IIJA also provides over $50 billion to improve water infrastructure in the West and national grid systems susceptible to cyberattacks, as well as $55 billion to replace lead service lines and national lead pipes that currently carry drinking water throughout the United States. The package includes $21 billion to remove pollution from soil and groundwater and to clean polluted areas in the United States, including Superfund and brownfield sites, abandoned mine lands, and orphaned gas wells.

Funding

Unlike President Biden's originally-announced plan, entitled "The American Jobs Plan," this bipartisan plan does not include an increased corporate tax rate as a source of funding. Instead, the plan is funded from increased IRS enforcement of pre-existing due taxes, redirection of unused unemployment and other COVID relief funds, state and local investment, and strategic petroleum reserve sales. Most interestingly for the private sector, lawmakers expect to fund $100 billion from public-private partnerships and direct-pay municipal bonds. This will create new opportunities for businesses interested in construction or electricity.

While the President's original plan detailed a series of tax credits in clean energy investments, a ten-year extension of the federal production tax credit, and an extension of the investment tax credit, the passed bill does not contain such allocations. However, as spending terms are not yet completed by the Senate, business are advised to stay informed as to whether such credits and extensions are added to further updates.

Looking Ahead

It is still somewhat uncertain as to the role that public-private partnerships ("P3s") will play with respect to infrastructure initiatives. The IIJA does, however, recognize the role of private investment in facilitating and implementing P3s and in several instances directs programs to consider P3s. The mere increase in available funds and additional projects that should follow will likely create more opportunities for P3s. The companion human infrastructure bill, the Build Back Better Plan, is still yet to be passed. While Build Back Better proposes increased taxes as a significant source of funding, there is question as to whether the bill can be passed without bipartisan support. Businesses should stay informed as to the status of Build Back Better and whether it will impact any of the new opportunities provided in the IIJA, Additionally, as the Senate releases more spending information, businesses are advised to keep note as to what new tax credits or grants become available in the transportation and clean energy spaces.

Four Key Takeaways

1. Transportation: The IIJA provides $550 billion in new transportation infrastructure funds. While significant portions are allocated to roads, bridges and tunnels, alternative transportation will also receive significant funding including railways, ferries, and airports.
2. Technology: The plan also includes $191 billion to upgrade for "other" infrastructure that is non-transportation based. This includes $65 billion for universal internet access.
3. Water: The bill allocates $55 billion towards improvements to water infrastructure systems, $50 billion to protect against cyber-attacks, droughts, floods, and wildfires, and $21 billion to remove pollution from ground soil.
4. Opportunities: The bill will provide new opportunities for businesses through bonds and public-private partnerships allocated by the Department of Transportation. Businesses are also well-advised to watch as the Senate continues to release new spending information, which may include new benefits such as tax credits and exemptions.

Jones Day

by Jeffrey D. Gaulin, Dean E. Griffith, Edward T. Kennedy, Richard P. Puttré, Jeffrey A. Schlegel and Brian L. Sedlak

November 23 2021

Infrastructure Investment and Jobs Act: Selected Changes Impacting Public-Private Partnerships

On November 15, President Biden signed into law the $1 trillion Infrastructure Investment and Jobs Act (the "IIJA" or the "Act") which cleared the House of Representatives in early November after months of delay. The new law (also known as the Bipartisan Infrastructure Framework or BIF) garnered considerable bipartisan support in the Senate where it was negotiated and crafted over the summer, and a narrow but ultimately determinative slice of crossover votes in the House. The first of two large infrastructure packages promised under the Administration's Build Back Better agenda, the Act allocates $550 billion in new federal funding in a bold attempt to address decades of underinvestment in America's infrastructure. These funds will go to support investments in highways, passenger and freight rail, public transit, ports, airports, water, broadband, energy efficiency, power and grid resiliency and electric vehicle charging stations, as well as to fund a number of research and pilot programs.

Important to the expansion of the public-private partnership ("PPP") model in the transportation, social infrastructure and broadband sectors, among other things the IIJA provides guidance on the use of PPPs on eligible projects, expands several programs that leverage additional private sector investment in infrastructure, and funds grants to consider asset concessions and PPPs, which we summarize below.

1. Transportation Infrastructure Finance and Innovation Act (TIFIA). The Act contains a number of updates to the federal TIFIA loan program, which should help expand the availability of low cost federal loans to projects procured under a PPP delivery method and improve the terms under which the Build America Bureau can commit funding to support projects. The changes include:

- Extending the period for contingent commitments under a TIFIA master credit agreement from three years to five;
- Raising the threshold above which more than one credit rating will be required for an eligible project ’s Federal credit instrument from $75 million to $150 million;
- Extending the potential maturity of a TIFIA loan for a capital asset with an estimated useful life of more than 50 years to the longer of (a) 75 years after the date of substantial completion and (b) 75% of the estimated usable life of the asset.
- Expanding the types of projects eligible for TIFIA loans to include:

– Transit-Oriented Transportation Projects: A project to improve or construct public infrastructure that either

> is located within walking distance from and accessible to a transit, passenger rail, intercity bus or intermodal facility, including a transportation, public utility or capital project; or
>
> is an economic development project, including commercial and residential development and related infrastructure, that (a) incorporates private investment and (b) is physically or functionally related to a passenger rail station or a multimodal station that includes rail service, (c) has a high probability to commence work within 90 days, and (d) has a high probability of reducing Federal funds assistance for the rail station or service by increasing ridership, rental payments or other activities that generate revenue in excess of project costs;

-Airport-related projects, including terminal development, gate construction and the conversion of vehicles and ground support equipment to low emission technology. (For a Transit-Oriented or Airport-related project to be eligible, a letter of interest must be delivered to the Secretary of Transportation (the “Secretary”) and it must receive a determination of eligibility from the Secretary by September 30, 2025. For each fiscal year, qualifying projects will be eligible for up to 15% of TIFIA’s total budget authorization for such fiscal year); and

-Projects to acquire plant and wildlife habitats pursuant to a transportation project environmental mitigation plan that has been approved by the Secretary of Interior in accordance with the Wildlife Protection Act.

- Requiring Payment and Performance Security: Any project making use of the TIFIA program must demonstrate that its design and construction are supported by appropriate payment and performance security, regardless of whether the obligor is a private entity (as is the case in PPP projects) or a State, local authority or any department or instrumentality thereof. If local law requires such security then the Secretary may accept that security if “the Federal interest with respect to Federal funds and other project risk related to design and construction is adequately protected”.
- Providing for a Streamlined Application: The Act requires the Secretary to design, within 120 days after enactment of the IIJA, a streamlined application procedure for certain projects that have, among other required elements, a reasonable expectation that the contracting process for the project can commence within 90 days after a Federal credit instrument is obligated for the project under the TIFIA program.

2. Private Activity Bonds (PABs). The Act increases the limit of PABs for qualified highway or surface freight transportation facilities from $15 billion to $30 billion and expands the types of projects eligible for funding with PABs to include:

- A Qualified Broadband Project ("QBP"), defined as any project that (a) is designed to provide broadband service solely to one or more census blocks in which 50% of the residents do not have access to residential terrestrial fixed broadband service that delivers at least 25 megabits per second ("mbps") downstream and at least 3 megabits of service upstream, and (b) results in residential or commercial users or a combination of both enjoying speeds of at least 100 mbps download speed and 20 mbps upload speed. For a project to qualify as a QBP, however, the issuer will need to demonstrate that 90 of the locations that will receive the increased service either did not have any service or their service did not meet the minimum threshold of 25 mbps download/3 mbps upload. To qualify for PABs funding broadband projects, the issuer must also notify every existing broadband service provider in the service area and request information on the ability of each such existing provider to deliver gigabit service, and give such provider 90 days to respond.
- Qualified Carbon Dioxide Capture Facilities, to include funding for[(a) the eligible components of carbon capture facilities; i.e. the equipment included in such facilities used to capture, treat, purify, compress, transport or on-site store industrially produced carbon dioxide, or that is integral to or used for the process to convert coal or petroleum residue or biomass or other materials recovered in the industrial process into a gas to be used for industrial conversion; and (b) certain direct air capture technologies.

Both new categories of eligible PABs projects will enjoy a 75% exemption from the volume cap under per Section 146(g) of the Internal Revenue Code.

The Act does not, however, accommodate an industry request to expand TIFIA and PABs eligibility to certain kinds of social infrastructure such as courthouses or government buildings, although as noted above residential and commercial buildings adjacent to rail stations or similar facilities will become eligible for TIFIA funding.

3. Requirements for Transportation Projects Carried Out through PPPs: The IIJA requires a public partner carrying out a project using Federal financial assistance with an estimated total cost of at least $100 million to meet certain requirements no later than 3 years after the date of project operations, including:

- Conducting a review of the project, including a review of the compliance of the private partner with the terms of the PPP agreement;
- Certifying to the Secretary that the private party is meeting the terms of the PPP agreement or notifying the Secretary that the private partner has not met one or more of the terms of the PPP agreement by including a brief description of each violation of the PPP agreement; and
- Disclosing the certification or notifying the public without exposing any proprietary or confidential business information.

4. Value for Money Analysis: The entity carrying out a project estimated to cost more than $750 million and implemented with assistance under the TIFIA program or the Railroad Rehabilitation & Improvement Financing ("RRIF") Program, will be required under the Act to conduct a value for money (VfM) analysis and report the analysis to the Secretary. Requirements include providing (a) an evaluation the life-cycle cost and project delivery schedule, (b) a cost comparison between public funding and private financing for the project, (c) a description of the key assumptions made in developing the analysis, including benefit-cost analysis regarding the allocation of risk, (d) a forecast of user fees and other revenues expected to be generated by the project, and (e) other information that the Secretary of Transportations deems to be appropriate for such VfM analysis; and submitting a report of the VfM analysis results to the Build America Bureau and the Secretary and by uploading the report to the project website.

The Secretary, in coordination with the Build America Bureau, is required to submit the compiled analyses to Congress. The Secretary is also required to coordinate with the Build America Bureau and issue guidance on performance benchmarks, risk premiums, and expected rates of return on private financing.

5. Asset Concessions: The IIJA authorizes certain grants (maximum $2 million) to eligible entities, including a state, a unit of local government and an agency of a state or local government, to help them "develop, review, or enter into an asset concession" with a concessionaire, a private individual or corporation. The grants under this section include:

- Technical assistance grants used for (a) identifying assets for potential concessions, (b) soliciting and negotiating asset concessions and hiring staff for these purposes, (c) conducting a VfM analysis to compare benefits of asset concessions with other procurement methods, (d) evaluating options for the structure and use of asset concession payments, (e) assessing the risks and benefits of all contract provisions, (f) identifying best practices to protect the public interest, (g) identifying best practices for managing transportation demand and mobility to facilitate transportation demand management, and (h) integrating pricing, data, and fare collection with other regional operators; and
- Expert services grants where a state or local government agency uses the grants to retain the services of an expert firm to get direct project-related assistance and services, including:

-Project planning, feasibility studies, revenue forecasting, cost-benefit analysis, other economic assessments, public benefit studies, VfM analyses, business case development, lifecycle cost analyses, risk assessment, financing and funding options analyses, procurement alternative analyses, and statutory and regulatory framework analyses;

-Financial and legal planning;

-Early assessment of environmental review and regulatory processes and costs; and

-Assistance with entering into an asset concession.

The Secretary will be required to ensure that, among other things: (a) the asset concession will not make it more difficult for an eligible entity to construct a new project, (b) the full amount of any asset concession payment will be used to pay infrastructure costs of the eligible entity, and (c) the terms of the asset concession do not result in any burden on taxpayers.

November 24, 2021

Infrastructure Investment and Jobs Act Supports Broadband Partnerships.

Background

Broadband networks, like electric power systems a century ago,[1] have increasingly become drivers and enablers of simultaneous progress in just about everything that matters to communities. This includes robust economic development, lifelong educational opportunity, homeland security, public safety, affordable modern healthcare, workforce training and retraining, energy efficiency and security, smart transportation, environmental protection, efficient government service, and much more. As a result, a growing number of initiatives across America have sought to facilitate affordable access to broadband by working with willing incumbents, partnering with new entrants, establishing their own communications networks, or by developing creative new alternatives. For many, broadband partnerships have emerged as their most attractive option; for some, partnerships may be their only feasible option.[2]

Depending on the circumstances, partnerships can significantly improve a broadband project's prospects for success. Among other things, they can facilitate pooling of resources available to the partners, enable each partner to perform the tasks for which it is best suited, and allow for asymmetric allocation of benefits. For example, a well-crafted partnership can take advantage of a public or cooperative entity's ability to invest "patient capital" in projects that provide long-term benefits for the community and, at the same time, accommodate a private entity's need to earn more immediate profits. In some cases, partnerships can also enable the parties to comply with State restrictions on purely public broadband initiatives.

Recognizing the attractiveness of broadband partnerships, Congress and several States have sought to encourage them to help accelerate broadband deployment, adoption, and use. To cite some examples at the federal level, Congress appropriated $300 million in the Consolidated Appropriations Act to be distributed by the National Telecommunications and Information Administration exclusively to P3s.[3] Under the US Department of Agriculture's ReConnect Program, P3s are not only eligible to receive funding, but the USDA Rural Utilities Service's scoring criteria awards 15 points to P3s for doing so.[4] In the same vein, the bill that would become the Build Back Better Act, which the House of Representatives passed last Friday, contains a $280 million pilot program for urban P3s.[5]

Broadband partnerships are also increasingly popular at the State level. For example, responding with admirable vision to the COVID-19 pandemic, the Arkansas legislature voted unanimously this year to expand the authority of municipalities to engage in broadband initiatives. Among other things, Arkansas authorized municipalities to fund broadband projects through municipal bonds or special taxes, as long as they "partner, contract, or otherwise affiliate with an entity that is experienced in the operation of the facilities to be acquired or constructed."[6] A number of other states have funding programs that encourage or limit eligibility to broadband partnerships.[7]

Broadband Partnerships Under the Infrastructure Investment and Jobs Act

The IIJA does not just favor partnerships in broadband matters. It also does so for transportation[8] and cybersecurity.[9] (See, e.g., Section 40121). With respect to broadband, the Act establishes the $42.45 BEAD Program to support qualified broadband projects. The Act defines the term "eligible entity" as "a State,"[10] and it contemplates that States will funnel these funds to eligible "Subgrantees." That term is broadly defined as "an entity that receives grant funds from an eligible entity to carry out activities under subsection (f)."[11] Elsewhere, however, the Act makes clear that Congress intended partnerships to be among the favored recipients of IIJA funds (with our emphasis added in italics):

Section 60102(h) BROADBAND NETWORK DEPLOYMENT.—

(1) ORDER OF AWARDS; PRIORITY.—

(A) IN GENERAL.—An eligible entity, in awarding subgrants for the deployment of a broadband network using grant funds received under this section, as authorized under subsection (f)(1)—

…
(iii) may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for such grant funds …

Furthermore, Section 60102(e)(1)(D) requires States to submit 5-year Action Plans in accordance with specifications that the Assistant Secretary (the head of NTIA) is required to develop:

(ii) REQUIREMENTS OF ACTION PLANS. The Assistant Secretary shall establish requirements for the 5-year action plan submitted by an eligible entity under clause (i), which may include requirements to—

…
(VI) ascertain how best to serve unserved locations in the eligible entity, whether through the establishment of cooperatives or public-private partnerships;

As Kathryn de Wit, director of the Pew Charitable Trusts' Broadband Access Initiative, aptly put it in her recent article on the fundamental shifts that the IIJA may spawn,

One thing is certain: The shifts — whether training clinicians on new technology, wiring households to fiber or retraining workers — won't happen without partnerships. That's why the timing of the state five-year action plans is so critical. Research from The Pew Charitable Trusts has found that states have already used planning processes to evaluate need, drive stakeholder engagement and map out a plan for achieving broadband expansion goals.

Now is the time for businesses, research organizations, community partners and others to participate in the continuing state planning efforts, helping to shape state strategies for using federal dollars and developing plans that meet the needs of the state and its communities in ways such as sharing information on skills gaps in the labor force, identifying evidence-based solutions for increasing telehealth usage, or elevating how living on a fixed income may influence aging Americans' ability to access digital resources.[12]

Five or ten years into the future, we may look back on this as "the Age of Partnerships" – viewing that term in its broadest sense. Let's act now to make that happen.

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[1] J. Baller, "The Essential Role of Consumer-Owned Electric Utilities in Developing the National Information Infrastructure (Nov. 1994), https://tinyurl.com/3arcez52.

[2] Keller and Heckman Partners, "Broadband Partnerships: For Many Communities, A Good Option at a Good Time," IMLA Magazine (Sep-Oct 2021), https://tinyurl.com/4umyt5a3; J. Hovis, et al., "The World of Broadband Public-Private Partnerships: A Business Strategy and Legal Guide," Benton Foundation (May 2017), https://tinyurl.com/5psjsw3e; J. Hovis, et al, "Public Investment/Private Service: A Shared Risk Partnership Model for the 21st Century, Benton Institute (Oct 2020), https://tinyurl.com/cejddhyp.

[3] NTIA, "Commerce Department's NTIA Announces $288 Million in Funding Available to States to Build Broadband Infrastructure," May 19, 2021, https://tinyurl.com/aejt5k7z.

[4] USDA Rural Utility Service, Funding Opportunity Announcement, Oct. 25, 2021,

https://tinyurl.com/c8ra38pa ("Local governments, non-profits and cooperatives (15 points). Applications submitted by local governments, non-profits or cooperatives (including for projects involving public-private partnerships where the local government, non-profit, or cooperative is the applicant) will be awarded 15 points.")

[5] House Committee on Energy and Commerce, "Fact Sheet," (November 2021), https://tinyurl.com/crrp8epf.

[6] J. Baller, "Arkansas State Legislature Significantly Expands Local Broadband Options, February 9, 2021, https://tinyurl.com/4arhtztt.

[7] See, e.g., the Virginia Telecommunications Initiative, https://www.dhcd.virginia.gov/vati; the Maryland Expansion of Existing Broadband Grants Program, https://dhcd.maryland.gov/Broadband/Pages/default.aspx; the Massachusetts Mass Interconnect Program, https://broadband.masstech.org/recovery-plan-programs/mass-internet-connect; and the Georgia Broadband Deployment Initiative, https://www.gacities.com/Resources/Reference-Articles/Resources-to-Serve-Cities-Georgia-Broadband-Deploy.aspx.

[8] See, e.g., Section 11508 of the IIJA.

[9] See, e.g., id., at Section 40121.

[10] Section 60102(a)(1)(F).

[11] Section 60102(a)(1)(F). The "subsection (f)" in the definition of "subgrantee" refers to Section 60102(f), the provision specifying the permissible uses of the funds appropriated under the Act.

Keller and Heckman LLP

November 29 2021

USDOT Reveals How It's Handing Out Infrastructure Money to the States.

Of course, a bill as huge as the five-year, $1.2-trillion Infrastructure Investment and Jobs Act signed into law by President Biden Nov. 15 will deliver benefits to every one of the 50 states and the District of Columbia. But how much benefit will vary from state to state. A report in Mass Transit examined the factors the U.S. Department of Transportation used to determine how to divvy up the portion of the $1.2 trillion devoted to public transit.

For starters, every state will get at least 31 percent more money in the first year of the cycle than it got from the transit portion of the funding bill it replaced, the Fixing America's Surface Transportation Act (FAST Act). The District of Columbia will see the greatest percentage increase, 52 percent, while ten states will see increases of at least 40 percent. From largest to smallest percentage, they are: Vermont, Wyoming, Alaska, Maine, New York, Illinois, North Dakota, Pennsylvania, Massachusetts and New Hampshire.

On average, American transit riders spend 77.5 percent more time commuting by transit than by car. Strategic spending could change that. Today, the five states with the highest time penalty: Wyoming (150.3 percent), Idaho (150.2), Nevada (133.9), Connecticut (130.4) and Rhode Island (120.1). Arkansas transit users spent the least amount of extra time riding (31.3 percent).

Continue reading.

NEXT CITY

SANDY SMITH

NOVEMBER 24, 2021

S&P U.S. Municipal Utilities Credit Brief: Medians Held Strong In 2020 As California Retail Water And Sewer Utilities Prepare For A Dry Future

Overview

Despite the effects of the COVID-19 pandemic on the broader economy, California retail municipal water and sewer utilities demonstrated generally stable credit quality in fiscal year 2020. In fact, most California utilities saw improved revenue growth year-over-year (4.4%). Increased residential water consumption in the region helped offset lower revenues from commercial customers and many utilities scaled back discretionary costs without eroding operating performance. Most key financial median ratios, including available liquidity median metrics, improved modestly, reflecting the financial resilience of California retail municipal utilities. The medians also indicate that California utilities have very strong enterprise and financial risk profiles, which reflect strong demographic and financial characteristics. Although some areas in the state have faced lower levels of economic activity due to social-distancing practices and mandatory business closures because of the pandemic, the influence on utility revenue has been relatively muted, as most serve diverse customer bases that are anchored by steady residential demand, with the exceptions of those with outsize agricultural or tourism and hospitality sector concentration. These utilities also remained operationally resilient in the face of past drought conditions and record-setting wildfires. As a result, we believe California utilities have displayed significant stability in financial performance in recent years.

S&P Global Ratings maintains water and sewer utility revenue ratings on over 320 retail utilities in California. About 57% of these utilities are in the 'AA' category, 33% are in the 'A' category, 7% are in the 'AAA' category, and fewer than 3% are in the 'BBB' category or lower. The higher rating distribution reflects California utilities' generally stronger enterprise and financial risk profiles than the national medians (see chart 1). In addition, about 90% of the ratings have a stable outlook, while approximately 10% have a negative outlook. Most ratings with a negative outlook have exposure to tourism or agricultural production. We believe that pervasive drought and accelerating water shortages could potentially lead to the permanent idling or conversion of farmland over time, which heightens business risk for water purveyors that serve farming operations or farmworkers. For more information, see "20 California Irrigation District Rating Outlooks Revised To Negative From Stable On Rising Drought Severity," published Oct. 28, 2021, on RatingsDirect.

Continue reading.

17 Nov, 2021

[Senior Living Muni Bond Defaults Reach $1.6B in 2021, With More Pain Coming.]

Thirty-one senior living borrowers have missed a payment on their municipal bond debt for the first time in 2021, representing about $1.6 billion of muni bonds in default and tying the record number of senior housing defaults set last year.

That's according to the latest statistics from Municipal Market Analytics (MMA). The findings build on previous MMA reports, including one last month that showed 27 senior housing muni bond defaults this year.

Distress in the sector is likely to worsen before the sector stabilizes and rebounds, according to MMA Partner Matt Fabian.

"Covid has made labor costs much higher, made staffing much more difficult and made occupancy more volatile," Fabian told Bloomberg. "Longer term it's a sector with good prospects, medium term, we're probably going to see more defaults."

The senior housing bonds in default represent 4.3% of the sector's $37.6 billion of debt, as of Jan. 1, 2021.

Senior living has been hit harder by Covid-19 than any other U.S. public finance sector, Moody's Investor Service noted in May 2020, predicting a wave of bond defaults.

"No other sector has seen the singular confluence of both revenue and expenditure difficulties as the elder housing sector," Moody's Vice President Dan Seymour wrote in a commentary at the time.

The latest default numbers from MMA indicate that despite recent occupancy gains and the widespread vaccination of residents and staff against Covid-19, the senior living sector is still particularly vulnerable to financial distress, particularly for operations that already were in a tenuous position pre-pandemic. One CCRC that recently defaulted had a 2019 debt service coverage ratio of 0.0x, the MMA report noted.

Labor issues have become especially pressing, with assisted living employment falling by 38,000 workers since the start of the pandemic, according to recent data from the American Health Care Association/National Center for Assisted Living (ACHA/NCAL).

While some senior living providers have expressed confidence that they can raise monthly rates to largely compensate for higher labor costs, operators that are less stable could flounder.

Indeed, more "spectacular failures" are almost certain to occur in the sector, Shankh Mitra, CEO of Welltower (NYSE: WELL), said on the real estate investment trust's most recent quarterly earnings call.

Mitra and other senior living leaders have predicted that as financial distress comes to a head, industry consolidation will occur, with properties moving into the control of more stable owners and operators.

Such consolidation is already coming to pass among providers with muni bond debt. Today, a judge with the U.S. Bankruptcy Court of New Hampshire approved the sale of Hillside Village Keene to Covenant Living.

Faced with Covid-related pressure, Hillside Village Keene — a 222-unit life plan community — was unable to meet its obligations related to long-term tax-exempt bond debt and filed for Chapter 11 bankruptcy protection. Skokie, Illinois-based Covenant in August 2021 agreed to pay $33 million to acquire the distressed community, if no higher bids emerged through a stalking horse process.

Covenant adds Hillside Village to its existing portfolio of 18 communities in nine states.

Senior Housing News

By Tim Mullaney | November 22, 2021

ESG In U.S. Public Finance Credit Ratings: S&P 2022 Outlook And 2021 Recap

View the S&P Outlook & Recap.

[Free registration required.]

29 Nov, 2021

Muni Strategists See Average of $470 Billion of Supply in 2022.

- **Issuance estimates range from $420 billion to $495 billion**
- **Bank of America differs with estimate of about $550 billion**

Bankers in the $4 trillion municipal-bond market should prepare for a busy 2022 with issuance that's mostly expected to be on par or more than this year.

Sales forecasts collected from almost a dozen firms range from about $420 billion to $495 billion. A notable outlier is the projection from researchers at Bank of America, the market's largest underwriter, who expect a record year of sales totaling $550 billion.

Averaging the 11 forecasts show municipal issuers are expected sell about $470 billion of bonds next year.

States and local governments have sold about $422 billion of long-term debt so far this year, plus another $20 billion sold with corporate identifiers with about three weeks left before the winter holidays. Including municipal-backed corporates, long-term sales are running at a pace about 5% below 2020, data compiled by Bloomberg show.

For much of the year, investors flooded funds that invest in state and local government debt on the outlook for higher taxes and comfort with the state of municipal credit buoyed by federal stimulus. Overall, investors added about $81 billion of new cash to municipal mutual funds, according to the Investment Company Institute.

The market would need about $475 billion of supply next year 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.

Key Insights

- Bank of America municipal analysts see a record boom of upcoming sales with governments issuing $550 billion of bonds in 2022. Yingchen Li and Ian Rogow, co-heads of municipal research, said that governments' balance sheets, flush with federal dollars, will permit them to sell more debt for infrastructure projects.
- That's an opinion shared by Tom Kozlik, head of municipal research and analytics at Hilltop Securities. He said muni-bond sales are poised to "materially rise" next year as "a long-standing aversion to funding infrastructure and other key projects with municipal bonds will begin to abate."
- Strategists at UBS led by Thomas McLoughlin and Kathleen McNamara estimate a "modest supply contraction" because issuers will have less need to sell debt because of strong finances and because there were fewer bond ballot measures approved by voters. The prospect of higher interest rates also could stymie refinancing sales, they said.
- The group said that total returns for investment-grade municipal bonds will be low, likely between 1% and 2% while those on high-yield debt should perform better.
- The federal infrastructure bill will be "constructive" for municipal supply, said Matt Fabian, a partner at Municipal Market Analytics. He expects sales to reach between $450 billion and $475 billion.
- "Governments will want to piggy back their own priorities onto projects being funded with federal dollars, and assuming the federal spending stabilizes or improves areas, it will encourage development, and development brings municipal bonds," Fabian said in an email.
- Peter Block, a managing director at Ramirez & Co. said that because the new federal aid for infrastructure will be spent over the next five- to eight-years he doesn't expect "any sea change" in the amount of bonds sold for public works projects. He forecasts $476 billion of total sales.
- Erin Ortiz, managing director for municipal credit at Janney Montgomery Scott, expects $490 billion of new sales bolstered by historically low interest rates and a bevy of infrastructure needs. She expects the debt will be well absorbed into the market.
- "The demand side is still very favorable," she said in a interview. "If a government has a project they are perusing this is a good environment for them."
- Charles Peck, head of public finance at Wells Fargo & Co., estimates new muni sales will be "flat to slightly up" in 2022 compared with this year. He said that governments may borrow for "ancillary infrastructure" projects like broadband and electric vehicles.
- Analysts at Morgan Stanley round out the low end of the forecasts, saying that debt issuance will total about $420 billion in 2022.
- "Decreased new money issuance may seem counterintuitive given increased federal infrastructure spending, but historically this hasn't reliably boosted muni borrowing," strategists Michael Zezas, Samantha Favis and Barbara Boakye wrote in a research note.

Bloomberg Markets

By Danielle Moran

November 24, 2021

Monetary and Fiscal Policies on Municipal Bond Markets.

As we approach the end of 2021, the big question for all financial markets is how the federal monetary and fiscal policies are going to shift to address various market forces like

inflation, economic recovery, supply chain chaos and short- to long-term impacts of COVID-19.

Since the start of the pandemic, the federal government has had numerous interventions in the form of fiscal stimulus for individuals, businesses and local & state governments, which, when paired with the reopening of the U.S. economy, resulted in peak growth for the economy in the 2nd quarter of this year. However, in the upcoming months, the economic growth will likely be tamed and the markets will likely experience a normalized expansion. It's also important to note that the recently signed, bi-partisan, infrastructure bill has a spending plan spread over many years, which will continue to add to the economic growth for years.

In this article, we will take a closer look at some of the market forces and how they are impacting the municipal bond markets; in addition, we will explore the federal government's approach in the current times.

Continue reading.

municipalbonds.com

by Jayden Sangha

Nov 24, 2021

2022 Muni Outlook: Near-Term Pain, Longer-Term Opportunity

Current low yields and tight spreads in the municipal bond market have made it difficult for investors to find opportunities to earn attractive interest income on their investments. We expect that to change in 2022.

Our outlook for 2022 is that both spreads and yields should modestly increase. This may result in near-term price declines, but we expect there will be opportunities for higher yields. Portfolios that are appropriately positioned should benefit from the rise in spreads and yields over time (a spread is the difference in yield between two bonds of comparable maturity, and reflects the additional compensation investors require to own a security relative to a highly rated alternative, such as a U.S. Treasury bond).

Early in 2021, there were concerns that the ongoing pandemic would create waves for the finances of some municipal issuers and lead to downgrades. That didn't happen. Instead, Washington threw a life raft to the muni market. The economy also recovered much quicker and stronger than expected. As a result, credit concerns ebbed and prices on muni bonds didn't fall as much as other fixed income sectors, resulting in munis outperforming most other highly rated fixed income sectors.

Continue reading.

adviserperspectives.com

by Cooper Howard of Charles Schwab, 11/23/21

The New COVID-19 Variant And Municipal Markets (Bloomberg Radio)

Eric Kazatsky, Senior US Municipals Strategist for Bloomberg Intelligence, joins the show for the "Munis in Focus" weekly segment. He talks about how a step backwards for the economy could affect muni markets nationwide.

Hosted by Paul Sweeney and Katie Greifeld.

Listen to audio.

Bloomberg Radio

Nov 26, 2021

U.S. States Flush With Aid Spend at Fastest Pace in 35 Years.

- **Total spending, including stimulus, rose 16% in fiscal 2021**
- **States have spent $427.9 billion in overall Covid-19 aid**

Spending by U.S. states in the most recent fiscal year grew at the fastest pace in at least 35 years as the governments deployed a surge of federal relief funds.

Total spending, including stimulus, rose about 16% to an estimated $2.65 trillion in fiscal 2021, which for most states ended on June 30, according to a report published Friday by The National Association of State Budget Officers. In the past two years, states reported spending $427.9 billion in federal Covid-19 aid, the report said.

The unprecedented spending clip last fiscal year highlights the sheer scale of pandemic aid the federal government handed to states in an effort to cover the costs of responding to Covid-19 and to ease the hit to the nation's economy. It's part of the backdrop that's helped municipal debt outperform the rest of the U.S. bond market this year.

"We're seeing states use these funds in a continued effort to defeat Covid-19 and invest in the future," said Brian Sigritz, NASBO's director of state fiscal studies. "The amount of aid states and localities have received is higher than prior downturns. Of course, this downturn is different."

Total state expenditures and federal funds to states grew the fastest in the 35-year history of NASBO's report. As federal funding spiked 35.7% in fiscal 2021, general-fund spending grew at just 4.1%, below the historical average of 5.3%, according to the report.

States tapped funds to pay for programs ranging from public assistance to Medicaid, transportation and education. The largest increase was in a category that includes Covid-specific expenditures such as public-health programs, unemployment insurance and emergency management. States have until the end of calendar 2024 to allocate money from their Coronavirus State and Local Fiscal Recovery Funds.

It's still too early to tell what impact the stimulus funds might have on bonding needs, said Sigritz. In fiscal 2021, bonds financed about 1.7% of state expenditures.

Bank of America Corp., for one, expects the influx of cash will lead local governments to take on new projects, helping spur record muni sales next year.

Bloomberg Economics

By Nic Querolo

November 22, 2021

[How One City is Working to Make Spending Data More Transparent.]

Efforts by Los Angeles' controller to open up city fiscal data took on an added dimension when Covid-19 hit.

Los Angeles Controller Ron Galperin says that by the time he arrived on the job as the city's chief taxpayer watchdog he'd developed something of an obsession with where L.A.'s revenues came from and how they were being spent.

Wanting to understand why the city at times didn't have the money for certain priorities was one factor driving this interest, explained Galperin, who worked as an attorney, small business owner and journalist before being elected to his post in 2013. "I ran for controller because I believed that we had to run our city much more effectively and that data was a key," he said during a recent virtual conference held by the National League of Cities.

One of his priorities since taking office has been opening up the city's financial data so that it's available online for residents and city staff and officials to easily access and scrutinize.

Continue reading.

Route Fifty

by Bill Lucia

NOV 24, 2021

[Puerto Rico's Bankruptcy Exit Likely Pushed Out to 2022.]

- **Judge Swain gives U.S. DOJ until Jan. 7 to defend Promesa law**
- **Commonwealth at risk of increases in retirement expenses**

Puerto Rico creditors hoping the commonwealth exits its more than four-year bankruptcy in 2021 will need to wait a bit longer as the U.S. Department of Justice may weigh in on the process.

U.S. District Court Judge Laura Taylor Swain is reviewing Puerto Rico's plan to restructure $33 billion of debt, including $22 billion of bonds, after finishing closing arguments Tuesday on the debt adjustment plan. The hearings ended after hurricanes, earthquakes, political upheaval and the coronavirus pandemic postponed the bankruptcy process for years.

Swain is likely to wait until next year to issue her ruling because on Monday she gave U.S. government lawyers until Jan. 7 to decide whether to get involved in defending the constitutionality of the federal law, called Promesa, that allows Puerto Rico to reduce its obligations through bankruptcy.

"It is a little frustrating it's been pushed out," Daniel Solender, head of municipals at Lord Abbett & Co., said about the delay. "It's already been a pretty long wait. You want this to get completed. It's been going on for so long and everyone's just ready for it to be over."

Even with the potential delay, prices on some Puerto Rico general obligations remained in line with recent trading levels. A G.O. with an 8% coupon and maturing in 2035 changed hands Tuesday in a $2 million-size trade at 88 cents on the dollar, up from 87.75 cents on Nov. 15, the last time there was a trade of at least $1 million, according to data compiled by Bloomberg.

Puerto Rico's bankruptcy began in May 2017. It's the largest municipal workout, surpassing Detroit's 2013 bankruptcy. Bondholders haven't been paid since 2016 and as long as the island remains in bankruptcy, its residents live under a cloud of default.

Swain mentioned the people of Puerto Rico in her final statements before ending Tuesday's hearing, saying thousands of residents have shared to the court how the bankruptcy has affected their lives.

"As I make my legal decisions, I will always be mindful of the reality of your lives and the future of your homeland," Swain said.

That homeland has a financial monitor, however. A federally-appointed oversight board weighs in on Puerto Rico's budgets in addition to managing its bankruptcy. Even if Swain approves the debt plan, the oversight board will continue to oversee the island's finances until the commonwealth has implemented balanced budgets in four consecutive years.

To help control spending, the board wants to freeze the pensions of teachers and judges, move them to a defined contribution plan and end cost of living adjustments, which Swain said she will rule on. Additionally, the board is seeking court approval to prohibit island lawmakers from increasing retirement benefits for public workers.

Yet, even if the court sides with the board on these issues, Puerto Rico lawmakers will almost surely pass additional future pension laws anyway, Matt Fabian, a partner at research firm Municipal Market Analytics, wrote in a report Monday.

Investors will need to consider added pension costs as long-term payouts may be slower and more volatile than what the debt restructuring plan offers, according to Fabian.

"Once the board has left the island, there will be few actors left with a funded interest in stopping the government from doing as it chooses," Fabian wrote.

Bloomberg Markets

By Michelle Kaske

November 23, 2021

— With assistance by Steven Church

S&P State Brief: Iowa

View the Brief.

16 Nov, 2021

IRS Sets Releases New Rules For Private Activity Municipal Bonds.

On November 10, 2021, the IRS released Rev. Proc. 2021-45 setting forth calendar year 2022 methodologies for establishing private activity bonds volume cap (state ceiling) as well as brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrows, such as those often used in housing and other community-oriented private activity bonds.

For calendar year 2022, the amounts used under § 146(d) of the Internal Revenue Code to calculate the state ceiling for the volume cap for private activity bonds is the greater of (1) $110 multiplied by the State population, or (2) $335,115,000. In addition, Rev. Proc. 2021-45 places limits on the issuance of agricultural bonds. For calendar year 2022, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $575,400.

Rev. Proc. 2021-45 also set forth safe harbor rules for brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow. For calendar year 2022, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $43,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, $4,000; and (2) for any issue, the issuer does not treat more than $122,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

Taft Stettinius & Hollister LLP – Raymond Headen

November 23 2021

MSRB Staff Examines Change in Use of External Liquidity over Time: Cadwalader

In a new report, MSRB staff examined the use of external liquidity in both "small" ($100,000 or less) and "large" ($1,000,000 or more) secondary market transactions over the past decade. As defined in the report, external liquidity is when "a customer purchase or sale is filled using the offering or bid of a dealer that is different than and not affiliated with the client's dealer."

MSRB staff analyzed how municipal market participants accessed the secondary market of fixed-rate, long-term securities in the years 2011, 2015, 2019 and 2020. As to small market transactions, from 2011 to 2019, the staff found an increase in external liquidity likely due to the increased use of online brokerages largely by individual investors. (From 2019 to 2020, there was a minimal decrease in small market transactions, likely attributable to the pandemic.) As to large market transactions, the MSRB found a decrease in external liquidity from 2011 to 2019. The researchers identified an increase in large market transactions in 2020. The MSRB concluded that the pandemic had a large impact on external liquidity usage in 2020. The staff researchers found that external liquidity usage varied greatly from month to month, peaking at the beginning of the pandemic and declining throughout the year.

The study also found a consolidation and decrease in the number of providers of external liquidity over the period. (In 2020, the top ten external liquidity providers accounted for 45% of all liquidity in trades, which was up from 42% in 2011). The MSRB suggested that those providers who left the market did not have a significant presence, and the number of firms providing "significant" external liquidity was on the rise.

MSRB staff said it will continue to monitor the use of external liquidity in the marketplace and will update the report when appropriate.

Cadwalader Wickersham & Taft LLP

November 19 2021

Previewing Enhanced CUSIP Groups Feature on EMMA: MSRB Webinar

On December 2, join MSRB staff for a free webinar to preview the completely redesigned "CUSIP Groups" feature that allows issuers to save a group of CUSIPs to use for future disclosure filings. This is one of a series of enhancements the MSRB is making to the free tools available for managing CUSIPs in the Electronic Municipal Market Access (EMMA®) system.

Click here to learn more and to register.

Quarterly Report of the GASB Chair.

The GASB Chair reports quarterly on the activities of the GASB to the Financial Accounting Foundation Board of Trustees and the members of the Governmental Accounting Standards Advisory Council.

January 1, 2021–March 31, 2021

Here's One Way to Get the Municipal Bond Market to Come Clean on Climate Change Risks.

The SEC might consider offering issuers a grace period before cracking down, this firm suggests

As climate change continues to take a toll on the built environment in the United States, investors are often in the dark about its effects. State and local governments, which issue roughly $500 billion of bonds each year, are being urged to be more proactive about addressing climate change, as MarketWatch has reported.

Now, a new proposal from a longtime muni-bond research firm offers a suggestion for [regulators focused on climate risks]() and looking to encourage municipal issuers to be more upfront with buyers of their bonds.

The solution: “a Climate MCDC program that allows muni borrowers not making sufficient disclosure of their material credit vulnerabilities via climate change a short period to officially post the related information they possess,” wrote analysts at Municipal Market Analytics in a Nov. 22 report.

MCDC stands for “Municipal Continuing Disclosure Cooperation,” and it refers to a successful 2014 initiative of the U.S. Securities and Exchange Commission, which offered more favorable terms for any municipal bond issuer willing to voluntarily self-report earlier instances of being out of compliance with disclosure regulations.

As the Municipal Market Analytics report notes, “In the past month of the MCDC safe harbor window (December 2014), 30 municipal issuers filed their first notices of past technical (23) and monetary (7) defaults. Even considering the COVID-19 pandemic, December 2014 still holds the record for most monthly new impairments since the Great Recession.”

MMA President Thomas Doe has been vocal about his skepticism of the municipal bond market’s approach to pricing climate-change risk. In a series of interviews with MarketWatch in August, he called migration to the sunshine states of the U.S. “denial”: “you may be able to live there for a short period, but it’s not going to be a 20-year experience.”

Muni-bond defaults are scant: 0.10% compared to 2.25% of all corporate bonds, according to the Municipal Securities Rulemaking Board, but advocates of better disclosure, like Doe, say climate risk is very mispriced. It might take only one bad weather event and one Congress reluctant to keep bailing out states and locals for an issuer to have trouble paying its debts.

Few other public finance observers have been quite as hawkish, but many share some concern that state and local issuers aren’t being as candid about the climate risks they face as investors might want — whether deliberately, or unintentionally.

The Nov. 22 note echoed much of what Doe told MarketWatch last summer: to the extent that the muni market needs discipline, it most likely won’t come from investors, since market supply and demand are so out of whack.

“Investors urge issuers to disclose ‘more and better information’ about risks, but don’t enforce true market discipline, the analysts wrote.

Yet, “Industry organizations representing issuers are encouraging voluntary disclosure with the hopes of avoiding a future regulatory mandate. But history suggests that efforts to obtain new voluntary disclosures may not generate the participation warranted and ultimately lead to a regulatory response.”

MMA concludes its proposal by noting that there are plentiful, often free, tools for issuers to use to quantify their climate risk. The SEC would be well within its rights to review bond documents to see if they “adequately disclosed reasonably known material risks to investors;” and, more broadly, to “convey its disclosure expectations.”

States are better-positioned to lead these efforts than local governments are, MMA writes, adding: "It is inefficient and not as credible for tens of thousands of local governments— varying in size, sophistication, and resources and many overlapping—to individually assess highly complex data, determine how their tax-bases, revenues, and operations could be impacted, develop resiliency plans, and make appropriate disclosures, all while fighting to retain or grow their respective allocations of local aid as their states decide what to pay for and where."

MarketWatch

By Andrea Riquier

Nov. 23, 2021

There Are No Municipal-Market Bond Vigilantes When It Comes To Climate Risk, This Study Confirms.

The old saw that municipal bonds don't default never accounted for climate change

From wildfires to floods, hurricanes to heat, the effects of climate change on our communities are well-known, and widely expected to get worse.

But as participants in the municipal debt market are starting to realize, there are no bond vigilantes to enforce discipline on state and local government issuers. A new study confirms that notion, showing that investors haven't yet begun to demand any premium for bonds that may be more at risk due to extreme weather.

That means that as weather becomes more volatile, things may have to change: either municipalities will pay more to borrow, or state governments and Washington may increasingly pick up the tab to make bondholders whole.

The report, from climate analytics firm risQ, Inc. analyzed the yields on about 800,000 municipal bonds issued between 2006 and 2021, accounting for about $2.5 trillion of the $3.9 trillion outstanding. "This is an era," the report notes, "where it is reasonable to assume climate risk was broadly recognized as a potential issue."

The research process involved making an estimate of the expected yield of all the bonds in the data set, based on factors that are known to influence yield, such as duration of the bond, type of issuer, and so on. It omitted climate risk as an input. Then, the researchers layered a proprietary climate risk score over the bonds, demonstrating that there is no correlation between climate and any additional risk premia for bonds that was unexplained by the other drivers.

The researchers then reran the same model, using only bonds issued between 2017 and 2021, noting that "physical climate risk came to the forefront of the collective awareness of the market after 2017's hurricane season," which remains the costliest on record.

But they come to the same conclusion with the second experiment: climate doesn't influence yields.

In addition to the data analysis they perform, risQ analysts have some important takeaways about why the municipal market hasn't yet reckoned with climate risk.

Among them is the old saw that muni bonds rarely default. As they note, “compared to other asset classes, municipal bonds have indeed been historically less risky. Because of this, systemic risk in general (climate and otherwise) has not been nearly as central a concern to the world and culture of municipal bonds as it has been to insurance or mortgage-backed security markets.”

Another is a belief that climate hasn’t historically caused defaults, an argument “that we hear less and less of as the climate crisis worsens,” the report notes. They call climate risk “a ‘frog in a pot of boiling water’ situation, wherein systemic risk is significantly underestimated, and the heat will at least turn up gradually, and maybe abruptly.”

What does this mean for investors?

Among other things, risQ repeats some of the themes MarketWatch has reported on in recent months: investors should be aware that the municipal market may have risks that are camouflaged by lopsided supply and demand, issuers with little incentive (so far) to disclose their challenges, and ratings firms and regulatory agencies that may not be as proactive as necessary.

The risQ report concludes with one example of a recent climate catastrophe: the fire in Paradise, California, in 2018, where nearly 90% of the town was destroyed and 90% of the population forced to leave. Despite that, Paradise was able to pay its bondholders, both because of state legislation that allowed California to step in and backfill payments, and because the state was able to secure direct federal aid.

As MarketWatch has previously reported, some observers think the municipal market may not be able to continue to rely on state and federal bailouts, particularly as “hundred year” weather events become every-year occurrences. By the time the frog realizes he’s in hot water, in other words, it may be too late.

“Bond issuers will need to prepare for potential ‘sticker shock’ in many cases — yields don’t reflect climate risk yet, but this is almost certainly a matter of when, not if,” risQ writes. But the sooner they take proactive steps, the better: addressing the problem is not just good for the overall market, but is considered a “credit positive” as well.

MarketWatch

By Andrea Riquier

Nov. 24, 2021

- Munis Set for ‘Golden Decade’ of Credit With Infrastructure Aid.
- Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures (2021)
- Expansion of Qualified Private Activity Bond Categories Under the Infrastructure Investment and Jobs Act : Ballard Spahr
- Federal Infrastructure Bill Set to Supercharge P3 Spending: Saul Ewing
- Fitch: Rising Insurance Costs Add to US Public Finance Cyber Pressures
- And finally, All In All, Not Such A Bad Day is brought to us this week by *Fite v. Mudd*, in which Austin Fite skateboarded into a city crosswalk – high as the proverbial kite (by his own admission) and without looking for oncoming traffic (also by his own admission) – and was, quite predictably,

hit by a truck. For his troubles (as he was not particularly injured), Mr. Fite was awarded 6.5 million. Dollars. 6.5 million dollars. Something about a faulty intersection or something, dude. While we've known for years that no good deed goes unpunished, we had not previously considered the converse. Fair play to the stoners.

WATER LAW - COLORADO

Glover v. Serratoga Falls LLC

Supreme Court of Colorado - November 15, 2021 - P.3d - 2021 WL 5296927 - 2021 CO 77

Owners of water-rights easement in ditch brought action against adjacent property owner asserting multiple claims arising from adjacent owner's construction activities.

Adjacent owner brought counterclaims seeking declaration of scope of easement owners' water rights, permission to alter ditches, and declaration of parties' maintenance obligations associated with each ditch. The Water Court entered judgment on the merits for adjacent owner and awarded attorney fees to adjacent owner. Easement owners appealed.

The Supreme Court held that:

- Water court had jurisdiction over claims;
- Adjacent property owner did not trespass on water-rights easement; and
- Water court acted within its discretion in awarding attorney fees against easement owners.

Claims in which owners of easement to access certain water rights through ditch sought declaratory judgments or "adjudications" related to the scope of those water rights and easements to convey those water rights presented "water matters" within exclusive jurisdiction of water court; before resolving dispute over location and maintenance of ditch, court first had to determine exact scope of decreed water rights in ditches and reservoir, which involved court deciding numerous right-to-use issues.

Adjacent property owner did not trespass on water-rights easement in ditch when performing construction work on adjacent property, which resulted in damage to physical infrastructure of ditch; adjacent property owner did not move ditch, adjacent property owner promptly repaired any damages without moving or altering ditch, and adjacent property owner properly came to water court to propose altering easement from open-air ditch to underground pipeline.

Water court acted within its discretion in finding that owners of water-rights easement in ditch lacked substantial justification for bringing trespass claim, and thus award of attorney fees against owners was authorized; court had determined that owner of adjacent property had not engaged in unilateral movement or alteration of ditch without consent and that adjacent owner did not interfere with easement owners' rights, and adjacent owner recognized that it would need to come to water court to propose alteration to ditch easement.

Water court acted within its discretion in determining that claim of trespass to water right, which was based on right to one fill of reservoir during each irrigation season, lacked substantial justification, warranting award of attorney fees; water court concluded that there was no evidence that any groundwater that was diverted caused injury to water right, and court found that reservoir continued to fill to capacity after installation of subdrains.

IMMUNITY - MINNESOTA

[Jepsen as Trustee for Dean v. County of Pope]

Supreme Court of Minnesota - November 10, 2021 - N.W.2d - 2021 WL 5227159

After child died of injuries from being thrown against a wall by father's girlfriend, trustee for child's heirs and next of kin brought wrongful death action against county and county social workers, alleging negligence in performing duties under Reporting of Maltreatment of Minors Act (RMMA).

The District Court granted county and social workers' motion for summary judgment. Trustee appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court held that:

- The immunity provision of the RMMA abrogates common law official immunity for child protection workers performing specified duties under the RMMA;
- Social workers' duties under RMMA were operational-level decisions and thus unprotected by discretionary-function immunity under the Municipal Tort Claims Act (MTCA); and
- Genuine issue of material fact as to whether social workers' failure to notify local law enforcement of reports of suspected child abuse was a proximate cause of child's death precluded summary judgment on claim that social workers violated RMMA.

LIABILITY - WASHINGTON

[Fite v. Mudd]

Court of Appeals of Washington, Division 2 - November 9, 2021 - P.3d - 2021 WL 5190918

Pedestrian brought action against motorist and municipality, alleging negligence after he was struck by vehicle while in crosswalk.

The Superior Court granting summary judgment regarding pedestrian's duty of care and intoxication affirmative defense, and granted judgment for pedestrian after jury verdict in his favor. Motorist appealed.

The Court of Appeals held that:

- Even without urinalysis, pedestrian's admission that he was "high," i.e., under influence of drug, during accident potentially satisfied complete defense from liability for injury;
  factual issue existed as to whether pedestrian was under influence of drug, and therefore whether motorist was entitled to affirmative defense to liability for injury;
- Trial court abused its discretion by submitting instruction to jury that improperly emphasized pedestrian's theory of case;
- Police officer's denial of knowledge of police reports of prior accidents at intersection at issue, on cross-examination by pedestrian's attorney, did not open the door so they could be admitted; and
- Although pedestrian was required to look before entering crosswalk, he was not required to specifically look to left and right before entering crosswalk; and
- Witness who testified at trial that she did not remember if pedestrian had looked before entering crosswalk could be impeached with her prior inconsistent statement that pedestrian did not look before entering crosswalk.

PUBLIC LANDS - WASHINGTON

[Michel v. City of Seattle]

Court of Appeals of Washington, Division 1 - November 8, 2021 - P.3d - 2021 WL 5176658

Homeowners brought amended claims for adverse possession, quiet title, prescriptive easement, trespass, and conversion relating to disputed property previously deeded to railway company and eventually conveyed to city.

City brought its own claims for adverse possession. On cross-motions for summary judgment, the Superior Court granted summary judgment in favor of homeowners, allowing homeowners to take disputed property by adverse possession and granting prescriptive easements for access. Following denial of its motion for reconsideration, city appealed.

The Court of Appeals held that:

- City established their actual and exclusive possession of disputed property, acquiring title by adverse possession more than 50 years prior;
- Land actually used or planned for use in a way that benefits the public as shown by the benefits flowing from governmental ownership is immune from claims of adverse possession; and
- Homeowners were barred by statute immunizing government-held property from adverse possession from taking possession of property.

City established their actual and exclusive possession of disputed property, acquiring title by adverse possession more than 50 years prior to action by homeowners claiming adverse possession of portions of property; city maintained a continuous presence on property for more than 60 years by using it for electrical distribution with power poles, city did not share possession of property with homeowners and their heirs or ensigns, city consented to the use of the property by third parties by allowing access to roadway, parks, recreation, and trails, city actively managed property, and city granted permits to portions of property to prior homeowners while requiring that it be allowed to access property at all reasonable times to ensure compliance with permitted use.

Because the legislature intended to broadly shield government-held land, the prohibition on adverse possession of public lands can apply to adverse possession claims brought against a government entity under the statute governing adverse possession claims based on payment of taxes, the statute governing adverse possession claims based on the disputed property being vacant or unoccupied, or the statute governing adverse possession claims brought within ten years of possession.

In the context of the statute immunizing certain government-held property from adverse possession, the statutory phrase “lands held for any public purpose” means land actually used or planned for use in a way that benefits the public as shown by the benefits flowing directly or indirectly from governmental ownership of the particular property

Homeowners were barred by statute immunizing certain government-held property from adverse possession from taking possession of city-owned public property; property was used continuously for recreation from the time of the city’s possession for more than 60 years, including for fishing, swimming, and as a public park and an inter-urban trail, and property was further used continuously to supply public utility service since the city’s possession, including for electrical distribution and water infrastructure.

PUBLIC EMPLOYMENT - WASHINGTON

Bradley v. City of Olympia

Court of Appeals of Washington, Division 2 - November 9, 2021 - P.3d - 2021 WL 5190924

Claimant, a former firefighter, sought judicial review of decision of Board of Industrial Insurance Appeals affirming Department of Labor and Industries' (DLI's) denial of workers' compensation benefits related to claimant's bladder cancer allegedly caused by firefighting activities.

The Superior Court granted claimant's summary judgment motion. City appealed.

The Court of Appeals held that:

- City's evidence showing that firefighting in general does not cause bladder cancer was insufficient to create a question of fact as to whether statutory presumption of compensability was rebutted;
- City failed to prove nonoccupational factors caused claimant's bladder cancer; and
- Claimant was entitled to attorney fees.

Munis Set for 'Golden Decade' of Credit With Infrastructure Aid.

- **However, lack of certain muni provisions seen capping issuance**
- **Fresh flood of cash may also suppress borrowing needs**

U.S. municipalities are set for another massive infusion of cash from the $550 billion infrastructure package, leaving participants in the muni-bond market to assess the impact on the nation's states and local governments.

In a nutshell, the analysis boils down to a couple big takeaways: It's great for credit quality in the $4 trillion market. Bank of America Corp., for example, sees a "golden decade" of credit ahead. But on the other hand, all that cash may even suppress bond sales.

The legislation will unleash spending in an array of areas: It allocates around $110 billion for roads and bridges, $66 billion for rail, and $39 billion for public transit. Another $65 billion is earmarked for connecting Americans to high-speed Internet, while $65 billion will go to the power grid and $55 billion for drinking-water systems.

The influx comes as municipalities have already collected a historic infusion of $350 billion of federal cash from the American Rescue Plan. Here's how investors, bankers and analysts expect the new funding will affect the dynamics and borrowers in the muni market:

Credit Boost

"The passage of the Infrastructure Investment and Jobs Act is broadly credit positive for the muni market as the infrastructure investment will boost economic growth and revenues for market issuers," wrote Yingchen Li and Ian Rogow, co-heads of municipal research at Bank of America, the market's largest underwriter.

Granted, the aid is a fraction of the $2.6 trillion U.S. infrastructure-funding gap estimated by the American Society of Civil Engineers. But the money "will likely still allow muni market issuers to address growing deferred maintenance costs," an issue that credit-rating companies have increasingly focused on over the past decade, according to Li and Rogow.

Ann Ferentino, a portfolio manager at Federated Hermes, also pointed to the funding as a “credit positive” given that municipalities typically assume the lion’s share of public-infrastructure investment.

“Historically, a portion of those efforts would have gone unaddressed, delayed or been funded through additional debt issuance that strained cash flows and eroded credit quality,” she said. The act will “take a load off states and municipalities by addressing decades of underinvestment in physical projects, a positive for investors in the broad muni securities market.”

Supply Disappointment

Some market observers initially expected the infrastructure plan and separate legislation would spur a flood of bond sales. Lobbying groups had advocated for the restoration of a debt-refinancing tool known as advance refunding as well as the revival of an Obama-era bond program. But those items didn’t make the final bill, dousing expectations for a deluge of issuance.

The infrastructure plan “isn’t likely to lead to a major increase in muni issuance,” according to Cooper Howard, a fixed-income strategist at Schwab Center for Financial Research.

“The package contains a few muni-friendly elements that could lead to a modest increase in muni issuance, such as the expansion of private-activity bonds, but issuance is unlikely to surge,” he wrote in an email.

State and local governments have sold about $412 billion of long-term bonds this year, around 0.6% less than the same period in 2020, data compiled by Bloomberg show.

Issuance Decline Mulled

There’s even the prospect of a decline in borrowing ahead because of the aid.

Charles Peck, head of public finance at Wells Fargo & Co., estimates new muni sales will be “flat to slightly up” in 2022 compared with this year. But he also envision another scenario.

“We could see a decline in issuance because there is so much cash available and some governments have paused as they try to figure out how to best use the money,” he said.

However, once issuers figure out those logistics, the infrastructure bill could spur more sales as larger projects get off the ground. He expects more borrowing for “ancillary infrastructure” projects like broadband and electric vehicles.

Mikhail Foux, head of municipal strategy at Barclays Plc, also anticipated a “capping effect” on new bond sales.

“Some of the funds municipalities will be using and would’ve been funded through the capital markets and now they won’t have to bond for it,” he said.

Some muni provisions could yet re-emerge in the Build Back Better Act, which is more focused on Democrats’ social priorities, said Matt Fabian, a partner at Municipal Market Analytics.

“Since that bill has been sent back for more discussion that means that the muni provisions are not dead, things can always come back as the bill is rethought,” Fabian said.

Bloomberg Markets

By Danielle Moran

November 17, 2021, 12:15 PM PST

— With assistance by Amanda Albright

Expansion of Qualified Private Activity Bond Categories Under the Infrastructure Investment and Jobs Act : Ballard Spahr

On November 15, President Biden signed the Infrastructure Investment and Jobs Act (PL 117-58) into law. This Act introduces more than $550 billion in new infrastructure spending in addition to reauthorizations of existing programs for a total of $1.2 trillion in federal infrastructure investment in local communities over the next eight years. The spending covers broadband infrastructure; air quality improvements; road, bridge, and tunnel repairs and reconstruction; rail and transit improvements; and clean water infrastructure.

The Act amends the tax-exempt bond provisions of the Internal Revenue Code (Code) to enhance the financing options available to state and local government to address the highlighted infrastructure needs. Specifically, the package adds two new categories of exempt facility private activity bonds (PABs) and additional volume cap for transportation PABs.

Here is what you need to know about the new PAB provisions:

Broadband Projects. The Act introduces qualified broadband projects as a new category of exempt facility PABs under Section 142(a) of the Code. Qualified broadband projects include facilities for the provision of broadband internet access to census tracts in which a majority of households lack broadband access prior to the date of issuance of qualifying bonds. Notably, this new category of PABs enjoys a 75% exemption from the volume cap requirements for privately owned projects and a 100% exemption from volume cap for government-owned projects.

Carbon Capture Facilities. The Act also adds qualified carbon dioxide capture facilities as a new category of exempt facility PABs under Section 142(a) of the Code. Qualified carbon capture facilities include key clean energy technologies such as eligible components of industrial carbon dioxide emitting facilities used to capture and process carbon dioxide, and direct air capture facilities. An eligible component is further defined by the Act as any equipment that is used to capture, treat, or store carbon dioxide produced by industrial carbon dioxide facilities or is related to the conversion of coal and gas byproduct into synthesis gas. Section 45Q(e) of the Code, relating to the business tax credit for carbon capture, defines a direct air capture facility as any facility which uses carbon capture equipment to collect carbon dioxide directly from air. Together, these technologies seek to capture and sequester emissions produced by power plants and industrial facilities that contribute to climate change. This new category of exempt facility PABs also enjoys a 75% exemption from the volume cap requirements for qualifying projects. As a partial offset, however, any otherwise available carbon capture credit is reduced by up to one-half if bonds are issued under this provision to finance the qualifying assets.

Qualified Transportation PABs. Additionally, the Act adds $15 billion to the national volume cap limitation available for qualified highway or surface freight transfer facilities. The prior volume cap limitation of $15 billion had largely been exhausted. The limitation for qualified highway or surface freight facilities is available by application to the U.S. Department of Transportation.

by Marybeth Orsini, Charles S. Henck, Jean S. Everett, Sheila Kles, and Andrew T. Wang

November 15, 2021

Infrastructure Investment and Jobs Act: Cybersecurity Impacts on the Energy Sector.

The November 15 signing of the Biden administration's bipartisan $1 trillion Infrastructure Investment and Jobs Act offers a prime opportunity to review the legislation, which brings a significant reinvestment in America's energy infrastructure and an opportunity for many in the energy sector. Unsurprisingly, following the Solarwinds Orion compromise and the ransomware attack on the Colonial Pipeline, cybersecurity features centrally in the act's provisions.

Service providers hoping to benefit from the act's substantial funding must be keenly aware of the cybersecurity requirements it implements, as they offer both potential opportunities for the prepared and potential pitfalls for the unwary. Although it would be impossible to analyze the full impact of the cybersecurity provisions here, we hope to highlight key aspects that warrant your further attention.

Cybersecurity Plans

One of the key cybersecurity provisions of the Infrastructure Investment and Jobs Act is its imposition of cybersecurity requirements as a potential precondition to receive federal funds. These requirements include submission of a cybersecurity plan demonstrating that the applicant has a mature cybersecurity program and a plan for maintaining cybersecurity throughout the life of the project. The plan will require detailed descriptions of how cybersecurity will be maintained, how ongoing risk evaluations will be conducted, how vulnerabilities or compromises will be reported and how Department of Energy cybersecurity programs will be leveraged.

These requirements create an urgent need for utilities, contractors and suppliers to ensure that they have robust cybersecurity mechanisms in place. The best way to do this is through regular risk assessments identifying gaps in technical, administrative and physical security. These assessments should be overseen by outside counsel so that potential security gaps and liabilities can be identified and rectified in a privileged manner before it becomes necessary to demonstrate that cybersecurity maturity to potential clients or funders.

Application of Cybersecurity Standards

The act further cements the centrality of two key cybersecurity models, the DOE's Cybersecurity Capability Maturity Model and the National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity. Both models provide a procedural framework for evaluating an organization's cybersecurity, conducting risk assessments and targeting future improvements. The act, however, makes these previously voluntary standards the default and requires documentation of any deviations, establishing their central role in discussions of cybersecurity going forward.

Continued Reporting

Perhaps the most significant change that we anticipate is the focus on continued evaluation and patching of cybersecurity risks. The cybersecurity plans potentially required under the act require ongoing evaluation and threat reporting, and the act provides a route to compliance by establishing a “voluntary” reporting program, encompassing:

1. Product testing,
2. A vulnerability reporting process,
3. Technical assistance to close vulnerabilities,
4. Biennial reviews of tested products and analysis of how they respond to and mitigate threats, and
5. Development of procurement guidance.

These ongoing requirements create an extended service obligation for vendors and contractors, which we anticipate may be filled by the original manufacturers and suppliers of equipment, by operations and maintenance contractors or by other third-party vendors. We also anticipate that, with increased and extended cybersecurity scrutiny, suppliers and contractors will face increased litigation risks as more vulnerabilities are identified and required to be corrected. Such reporting processes will also expose suppliers to potential compromise of intellectual property or the potential harm of inaccurate threat assessments.

Funding Opportunity

Although the Infrastructure Investment and Jobs Act imposes significant additional obligations on the energy industry, it also provides significant opportunities for growth through rate-based cybersecurity incentives, $250 million in grants and technical assistance for rural and municipal utilities and $250 million in grants for enhanced power grid security.

This funding creates massive opportunities for those with the cybersecurity infrastructure in place to satisfy the act’s requirements. We also note, however, concern that the added requirements connected to this funding may disadvantage smaller businesses, including women- and minority-owned business enterprises, that have not yet developed cybersecurity maturity, potentially forcing partnerships with more mature actors or reliance on external cybersecurity resources.

Key Takeaways

Cybersecurity requirements are not new to the energy sector, but the act significantly expands their application, creating both risks and opportunities for the energy industry. We encourage industry participants to begin thinking proactively about the act’s impacts, how best to position themselves to take part in government-funded projects subject to those requirements and what risks might lurk within these provisions.

Duane Morris LLP – Owen Newman and Chris J. Chasin

November 16 2021

Electricity Transmission Provisions in the Bipartisan Infrastructure Bill: Bracewell

On Monday, November 15, 2021, President Biden signed into law the $1.2 trillion Infrastructure

Investment and Jobs Act (the “Act”), commonly referred to as the Bipartisan Infrastructure Bill. The package provides funding opportunities for a variety of traditional infrastructure projects, including approximately $65 billion for energy and electric grid development. The Act’s energy provisions are diverse, and include opportunities for those investing in grid resilience and reliability, research and development for newer and emerging technologies such as battery storage and hydrogen, cybersecurity infrastructure, electric vehicle infrastructure, nuclear power, and emissions reduction technologies, among others. This update focuses on one subset of the energy provisions contained in the Act: direct investment in the nation’s electric transmission and distribution facilities.

Excluding portions of the Act related to research and development, the five provisions offering opportunities for transmission developers and owners beginning in fiscal year 2022 are of particular interest.

Transmission Facilitation Program

The Act establishes a Transmission Facilitation Program – funded by a $2.5 billion revolving loan fund – that allows the Department of Energy (“DOE”) to offer loans to, and enter into capacity contracts with, transmission developers in order to provide financial stability to proposed transmission projects. As envisioned, DOE’s implementation of the Transmission Facilitation Program will include DOE’s contracting with transmission developers for long-term capacity service with contract terms of up to 40 years, and for capacity not to exceed 50 percent of a transmission project’s total proposed transmission capacity. In addition to entering into such long-term transmission service contracts, DOE now has statutory authority to be a lender to qualifying transmission projects and provide technical assistance in “designing, developing, construction, operating, maintaining, or owning an eligible project.”

The Transmission Facilitation Program is specifically aimed at larger transmission projects – for new projects, only those capable of transmitting at least 1,000 MW qualify. However, upgrade projects may also qualify to participate as long as the upgrade is capable of transmitting at least 500 MW.

The Act funds the program but expects DOE to recover its costs from eligible projects either as a lender to the eligible project or, in the case of a transmission capacity contract, DOE may recover its investment through revenue recovered by the project’s ultimate customers. The Act directs DOE to terminate its capacity contracts “as soon as practicable” – i.e., once DOE determines that the project is independently financially viable – by reselling the capacity to third party marketers or relinquishing the capacity back to the developer. The Act also stipulates that DOE’s implementation of the Transmission Facilitation Program will provide that any DOE funds that a developer expends on studies for projects that are never constructed need not be repaid.

DOE Competitive Grant Program

The Act provides $5 billion in funding to DOE to establish a competitive program to fund grid resilience projects. Half of the funds will be awarded by DOE directly to eligible entities (which includes transmission owners and operators) and the other half will be distributed to states and Indian Tribes to fund their own resilience grant programs. Additionally, the Act’s small utilities “set aside” provides that at least 30 percent of grant funds must be made available to entities that sell no more than 4 million megawatt hours of electricity per year. The DOE Competitive Grant program must be initiated by DOE by May 14, 2022.

An interested applicant, in addition to abiding by any rules to be established by DOE, will be required to provide a report detailing its “past, current, and future efforts…to reduce the likelihood and consequences of disruptive events.” At least part of the justification for this provision is that entities will be limited to receiving a grant that is no more than the total amount it has spent in the prior three years on “efforts to reduce the likelihood and consequences of disruptive events.”

Grant recipients are required to spend proceeds on the any of the following activities:

(A) weatherization technologies and equipment;

(B) fire-resistant technologies and fire prevention systems;

(C) monitoring and control technologies;

(D) the undergrounding of electrical equipment;

(E) utility pole management;

(F) the relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors;

(G) vegetation and fuel-load management;

(H) the use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including— (i) microgrids; and (ii) battery storage subcomponents;

(I) adaptive protection technologies;

(J) advanced modeling technologies;

(K) hardening of power lines, facilities, substations, of other systems; and

(L) the replacement of old overhead conductors and underground cables.

Federal Transmission Siting Authority Reform

The Act amends Section 216 of the Federal Power Act in an attempt to reinvigorate DOE’s and the Federal Energy Regulatory Commission’s (“FERC”) backstop transmission siting authority. Initially established by the Energy Policy Act of 2005, Section 216 allows FERC to issue permits with eminent domain authority to transmission projects located in national interest electric transmission corridors (“National Interest Corridors”). National Interest Corridors are designated by DOE through the issuance of a study and report that it is required to complete every three years. DOE’s most recent report, however, issued in 2020, did not designate any National Interest Corridors. Dep’t of Energy, *National Electric Transmission Congestion Study* vi (2020).

FERC’s ability to issue permits under Section 216 was limited following a 2009 Fourth Circuit decision that interpreted the language of Section 216 as prohibiting FERC from issuing permits in the event a state agency expressly denied a transmission project’s siting application. *Piedmont Env’t Council v. FERC*, 558 F.3d 304, 309 (4th Cir. 2009). In other words, following *Piedmont*, FERC could use Section 216 when a state agency failed to act within a certain timeframe but could not issue a permit under Section 216 after a state agency actually denied a siting application.

The Act is intended to “undo” the adverse impact of Piedmont on DOE’s backstop authority and includes express language authorizing FERC to issue a permit where a state authority “has denied an application seeking approval” for the siting of electric transmission facilities located within a DOE-designated National Interest Corridor.

In designating National Interest Corridors, DOE must look to a variety of factors, including whether a lack of adequate electricity is imposing economic constraints on a particular region of the country, and non-economic factors such as whether a designation would serve the national interests and whether it would promote energy independence. The Act expands the scope of DOE's review by providing additional factors DOE may consider in providing a National Interest Corridor designation. Specifically, DOE may now review whether a designation will "enhance the ability" of electric generation facilities "to connect to the electric grid," whether the designation will decrease electricity costs for consumers, and also whether the designation will enhance the United States' energy security.

Whether this expansion to the backstop federal transmission siting authority, and additional factors DOE may consider in designating National Interest Corridors, will result in change will depend on how DOE and FERC implement the new provision. DOE is not required to issue a new transmission siting study until 2023. Because there are currently no DOE-designated National Interest Corridors, FERC is unable to issue permits under Section 216 today. Nevertheless, the Act's changes to Section 216 could significantly redefine the federal government's role in the siting of electricity transmission projects – a role that has historically been almost exclusively within the purview of the states.

Smart Grid Investment

The Act provides additional funding – $3 billion – and expands the scope of qualifying projects under DOE's Smart Grid Investment Matching Grant Program, 42 U.S.C. § 17386. Under this program, DOE may issue grants covering up to 50 percent of the costs associated with qualifying "Smart Grid investments." Transmission owners and developers may now apply for and receive grants to cover expenditures related to the purchase and installation of "advanced transmission technologies such as dynamic line rating, flow control devices, advanced conductors, network topology optimization, or other hardware, software, and associated protocols applied to existing transmission facilities that increase the operational transfer capacity of a transmission network."

Federal Financial Assistance to Non-Federal Entities for Grid Reliability and Resilience Projects

The Act provides $5 billion for DOE to offer grants to non-federal entities (state and local governments, state public utility commissions, and Indian Tribes) to collaborate with electric sector owners and operators on "innovative approaches…to harden and enhance resilience and reliability." This program is specifically targeted to allow states to develop resilience programs in coordination with municipal entities and rural electric cooperative entities "on a cost-shared basis." The program additionally appropriates $1 billion in financial assistance to rural and remote areas for the same purpose. The program must be established by DOE by May 14, 2022.

Bracewell LLP – Boris Shkuta, Michael Brooks, Stephen J. Hug, Rachael Novier Marsh and Catherine P. McCarthy

November 18 2021
