

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **Powell, Mnuchin Embrace New Stimulus After Fed Lending Rift.**

- **Powell says small businesses at risk in virus second wave**
- **Fed chair provides no hint of policy action later this month**

Federal Reserve Chair Jerome Powell and U.S. Treasury Secretary Steven Mnuchin both backed more fiscal stimulus to bridge the economy through the next few months of the pandemic as the promise of Covid-19 vaccines looms.

“Some fiscal support now would really help move the economy along” and guard against downside risks, particularly to small businesses, Powell told the Senate Banking Committee Tuesday during a joint appearance with the Treasury chief. “The risk of overdoing it is less than the risk of under doing it.”

Mnuchin said he is speaking with the Republican leadership including President Donald Trump, about further stimulus, adding “I urge Congress to pass something quickly.”

Washington has gridlocked for months over providing additional fiscal aid, though a bipartisan group of lawmakers unveiled a new proposal Tuesday to break the stalemate. Rising virus cases threaten to restrain economic activity and slow the recovery at a time when millions of Americans are out of work and businesses struggle to hang on.

Powell gave no indication how the central bank may respond to the risk of fading economic momentum when it meets Dec. 15-16, though he reiterated that it would use all of its tools to help the economy recover.

“We do have a long way to go,” Powell said, pointing out that about 10 million people remain out of work. “We will use our tools until the danger has well and truly passed, but it may require help from other parts of the government as well, including Congress.”

The bipartisan group of senators proposed \$908 billion of support, including \$300 billion of forgivable loans for small businesses, \$240 billion for state and local government and \$180 billion to extend unemployment benefits. Neither Republican nor Democratic leadership has signed on to the plan.

### **Fed Programs**

Powell and Mnuchin’s joint hearing was their first since they disagreed last month over the expiration of several emergency loan programs set up after the pandemic hit in March.

Fed officials including Powell had pushed for the extension of all the central bank’s lending facilities, saying they served as critical backstops and restored market confidence. Most of the funds are scheduled to expire Dec. 31.

Some of the programs have been sparsely used. These include the Main Street Lending Program, which supports bank lending to mid-sized companies, as well as facilities to aid the corporate bond

market and the debt of cash-strapped municipalities.

Powell said no central banker would want to remove backstops in the midst of an emergency. He said facilities could be re-established with the Treasury's Exchange Stabilization Fund serving as backstop against loss if necessary.

He was echoed later on Tuesday by Mary Daly, president of the San Francisco Fed.

"Those lending powers can't be overlooked as being valuable to the economy," Daly told reporters on a conference call. "Even when take-up of our facilities is low, it doesn't mean that our facilities aren't effective. They provide effective insurance."

Mnuchin announced last month that those Fed programs must sunset at the end of December, and asked the central bank to return unused funding authorized for the programs by Congress.

The Fed responded — in a rare public fracture between the two institutions — that it "would prefer that the full suite of emergency facilities" remain as a backstop "for our still-strained and vulnerable economy."

Even with the disagreement, Mnuchin praised Powell during the hearing and said the two had been speaking "constantly."

Powell noted that the lowest paid were experiencing double-digit unemployment.

"These are not people with a lot of savings, or a lot of resources, or a lot of opportunities right now," he said. "There are parts of the economy that really will need help, or that might need help, to get that last span of the bridge in place to get to the other side of the pandemic."

## **Bloomberg Economics**

By Craig Torres and Christopher Condon

December 1, 2020, 11:03 AM PST Updated on December 1, 2020, 12:21 PM PST

— *With assistance by Steven T. Dennis, Erik Wasson, Steve Matthews, Saleha Mohsin, and Catarina Saraiva*

---

### **[What US Municipal Securities Issuers Should Know About LIBOR Transition: Norton Rose Fulbright](#)**

The UK Financial Conduct Authority has warned that the London Interbank Offered Rate (LIBOR for short) is not likely to be published after 2021. What will happen to LIBOR-based municipal securities, loans, and derivatives that extend beyond 2021 if and when LIBOR goes away? The contracts could be remediated by pending New York and possible federal LIBOR relief legislation. For new contracts, municipal securities issuers and conduit borrowers may be asked to incorporate a new "hard-wired" fallback rate recommended by ARRC or ISDA. For existing (or legacy) contracts, they may soon be asked to enter into bilateral amendments or, in the case of derivatives, to adhere to a recently announced ISDA remediation protocol. What should they do to protect themselves?

[Read the Norton Rose Fulbright article.](#)

---

## **Signals or Noise in November for LIBOR Transition? - McGuire Woods**

Several remarks and releases by public officials and significant regulatory bodies in the first weeks of November garnered significant attention by financial institutions trying to discern next steps in the wind-down of USD LIBOR.

### **Fed Support for Synthetic USD LIBOR?**

First, at a November 10 [Senate Banking Committee hearing](#), Federal Reserve Board Governor Randal K. Quarles, who also serves as the Board's Vice Chair for Supervision, answered questions from legislators about how the Federal Reserve plans to address so-called "legacy" LIBOR-based contracts that are not due to mature until after the end of 2021, which is the presumptive end date for the publication of LIBOR by the ICE Benchmark Administration ("IBA").

In particular, in response to a question from Senator Toomey (R-PA), Governor Quarles explained that the Federal Reserve was working on "a mechanism that would allow those so-called legacy contracts, the great bulk of them, to mature on their existing basis without having to be re-negotiated and shifted to a new rate." He added that the Federal Reserve had been discussing such a "mechanism" with private banks, UK regulators, and the Financial Stability Board, an international body that monitors and makes recommendations about the global financial system. Governor Quarles did not reveal anything about the mechanism itself, however, other than to say that a "variety" of options were being considered. Our informal rendition of his exchange with Sen. Toomey, from the [hearing video](#), is in the margin.[1]

Two days later, in [testimony before the House Financial Services Committee](#), Governor Quarles gave a similar answer in response to questions from Rep. Patrick McHenry (R-NC), namely that the Federal Reserve was working on "a way to allow those legacy contracts to ... mature on their existing terms," and that it expected to "publicly define the way forward to address that" within the next few months. Governor Quarles added that while legislation might "ultimately" be required to deal with legacy contracts, the Fed at the moment was trying to "allow those contracts to mature before we have a legislative solution for the so-called hard tail.[2]

Finally, at the same House hearing, Governor Quarles agreed with Rep. Brad Sherman (D-CA) that there would be "significant disruption" if there is "no solution at all ... when LIBOR stops." But he repeated his belief that "there is a way that we can combine current measures that allow the bulk of the existing contracts to mature on their existing terms and then save legislation for the hard tail when we've had time to think about it." [3]

Those comments sound a bit like the notion of "synthetic LIBOR", which was advanced a few years ago by the UK Financial Conduct Authority ("FCA") as a way to deal with Sterling LIBOR in difficult-to-transition holdover contracts - essentially establishing a credit spread over a substitute rate (SONIA in the case of Sterling) published on the same "screen" as Sterling LIBOR (such that contract references to the IBA screen for Sterling LIBOR would land on SONIA + a margin). The [FCA has pushed forward](#) with this idea to clean up and deal with laggard contracts, and under legislation currently pending in the UK, the FCA would have broad authority to implement synthetic LIBOR as the fix for Sterling LIBOR contracts.

This works for Sterling LIBOR because its successor (SONIA) has a well-established forward swaps market (over half of the \$18 trillion notional value of Sterling swaps in the first half of 2020 were SONIA linked), but would have [significant obstacles for US Dollar LIBOR](#), with less than 1% of the \$

63 trillion in US Dollar forward swaps traded in the same period linked to SOFR (the presumptive USD LIBOR successor). Given that problem, market participants spent the week or so following his comments wondering what sort of Fed remedy those comments implied.

Not surprisingly, that was one of the first questions put to David Bowman, Sr. Advisor to the Board of Governors of the Federal Reserve, in the November 20 ARRC “office hours”. He (appropriately) declined to read those tea leaves for the call participants.

### **Legislative Solution Back in the Foreground?**

Fed Governor Quarles’ comments on LIBOR transition legislation also highlight a recent uptick in activity on a “legislative fix” in the New York State legislature and the US Congress. While buzz around legislative solutions seemed largely dormant for much of the year, [ARRC favored legislation](#) was finally introduced in the New York State Senate on October 28, and it has been reported that a [similar draft bill](#) is also circulating in Congress. Check back in coming weeks for highlights on the substance of those legislative items.

### **IBA Consultation**

Adding to the noise this past week was the November 18 [announcement by the IBA](#) of a consultation on its plan to terminate publication of all LIBOR tenors denominated in Sterling, EURO, Swiss Franc and Yen after December 31, 2021. US Dollar LIBOR was conspicuously absent from this list, which could be read to suggest that the demise of US Dollar LIBOR may not take place concurrently with those other currencies. This was also raised during the November 20 ARRC office hours call and (again appropriately) no speculation as to motive was offered. It should be noted, however, that the IBA have reiterated their warning that market participants should not expect US Dollar LIBOR to continue to be published beyond December 31, 2021.

So do these comments and announcements signal a shift in US Dollar LIBOR transition timing, or potential US Dollar LIBOR remediation options, or both? Or are they just understandable noise in a lengthy, complex and technically difficult process along the currently plotted path? Likely the latter but the timing and substance of US Dollar LIBOR transition continues to evolve.

McGuireWoods is continuing to monitor the evolving developments regarding legacy contracts and other LIBOR-transition subjects.

[1] The exchange with Sen. Toomey begins at about the 48:30 mark at the [hearing video](#):

Sen. Toomey: “I’m mostly concerned about orphan contracts, those contracts that have existed in some cases for years and extend into the future, and they assume a LIBOR index is available for ongoing payments. What are we going to do about these orphan contracts ... [that] don’t end until after the date on which we expect LIBOR to no longer be operative?”

Gov. Quarles: “I think we need to consider a mechanism that would allow those so-called legacy contracts, the great bulk of them, to mature on their existing basis without having to be re-negotiated and shifted to a new rate ... I think there are a variety of ways to do that. The banks have been discussing that, we’ve been discussing it with banks. It’s an international issue as well [so] we’ve been discussing it through the F[inancial] S[tability] B[oard] and directly with the U.K. which has a special responsibility for LIBOR, and that within the next month or two we should have a plan to share to address that.”

[2] The exchange with Rep. McHenry begins in the hearing video at about the 51:45 mark.

Rep. McHenry: "We want a clear understanding of the path forward on LIBOR. ... Can you give us some assurance of your process going forward?"

Gov. Quarles: "... The issue you raised is an important one from a stability point of view, which is that there are a lot of legacy contracts that currently rely on LIBOR that we need to define a path forward for after the end of 2021. The transition for new contracts is going pretty smoothly. The legacy contract is the big issue there ... I think finding a way to allow those legacy contracts to continue for at least some period, to allow the bulk of those legacy contracts to mature on their existing terms without a significant change would probably be the best way forward, and we are working on a method to do that. There are a variety of different ways that one could do that, but I would expect over the next couple of months to be able to publicly define the way forward to address that."

Rep. McHenry: "Do you have a legislative request, or a need for legislative action by the Congress?"

Gov. Quarles: "I think the ultimate transition will ultimately require a legislative element, but at this point I think the answer would be no because I think what we want to try to do is find a way to allow those contracts to mature before we have a legislative solution for the so-called hard-tail."

[3] The exchange with Rep. Sherman begins in the hearing video at about the 1:15:30 mark.:

Rep. Sherman: "What would be the consequence of simply not having any regulatory or legislative solution, would this result in a lot of class action lawsuits, etc.?"

Gov. Quarles: "If there were no solution at all, yes, when LIBOR stops there'd be significant disruption. I think there is a way that we can combine current measures that allow the bulk of the existing contracts to mature on their existing terms and then save legislation for the hard tail when we've had time to think about it."

**By Donald A. Ensing, Susan Rodriguez, Jennifer J. Kafcas & Joseph J. Reilly on November 25, 2020**

**Copyright © 2020, McGuireWoods LLP**

---

## **[LIBOR Termination May be Postponed to 2023: Day Pitney](#)**

On November 30, 2020, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency issued a [joint statement](#) (the Joint Statement) on LIBOR transition. The purpose of this statement was to encourage banks to transition away from U.S. dollar LIBOR (USD LIBOR) as soon as practicable while providing sufficient time for many USD LIBOR-based contracts to mature before USD LIBOR experiences disruption.

- *Extension of USD LIBOR.* ICE Benchmark Administration, in its capacity as administrator of USD

LIBOR, will consult on its intention to extend publication of USD LIBOR (other than one-week and two-month tenors) by 18 months. Instead of discontinuing publication on December 31, 2021, USD LIBOR (other than one-week and two-month tenors) would continue to be published until June 30, 2023.

- *LIBOR Phase Out.* Even though USD LIBOR would continue to be published through June 30, 2023, the Joint Statement calls on banks to cease entering into new contracts that use USD LIBOR as a reference rate by no later than December 31, 2021, and if practicable, as far in advance of that deadline as possible. Should banks enter into new contracts before that deadline that use USD LIBOR as a reference rate, those banks are encouraged to include clearly defined alternative reference rate provisions.
- *Avoiding Market Disruption.* The Joint Statement notes that extending the publication of certain USD LIBOR tenors for an additional 18 months would allow most legacy USD LIBOR contracts to mature in accordance with their terms without disruption.
- *Impact on Documentation.* Financial institutions are already including USD LIBOR replacement language in their contracts, so this extension should have little impact on documentation of new contracts. However, this extension could help avoid an onslaught of amendments to legacy contracts at the end of 2021 that would overwhelm borrowers and lenders alike.

## **Day Pitney Alert**

December 1, 2020

Day Pitney Author(s) Michael W. Kaufman, Namita Tripathi Shah

---

## **[S&P: SOFR Emerging As Alternative To LIBOR In U.S. Debt Markets](#)**

### **Key Takeaways**

- SOFR has emerged as the leading rate to replace dollar LIBOR, which is now scheduled to phase out for new-issue transactions by December 2021 and for most legacy transactions with active maturities by June 2023.
- Based on data from the Federal Reserve Bank of New York and earlier repo transaction data since the late 1990s, SOFR has been tracking closely with dollar LIBOR.
- The historical time series analysis between the two benchmark rates shows a positive average and median of LIBOR over SOFR.
- Because only daily SOFR rates currently exist, compounding is typically used for this new rate and helps smooth out most of the volatility in daily rates.

Following the July 2017 announcement by the U.K.'s Financial Conduct Authority that the London Interbank Offered Rate (LIBOR) cannot be assured following 2021, there has been significant discussion around replacement benchmark rates in financial markets. A recent consultation published by the ICE Benchmark Administrator and supported by the U.S. Federal Reserve has proposed to continue dollar LIBOR quotes for the most actively used maturities on legacy transactions until June 2023. Furthermore, U.S. bank regulatory agencies have recently stated that banks should stop using dollar LIBOR in new contracts "as soon as practicable" and, in any event, by Dec. 31, 2021. For U.S. debt instruments (including structured finance securities) with dollar LIBOR exposures and maturities beyond 2023, this will mean changes to benchmark interest rates. While market participants are working to build provisions for alternative benchmarks in new transactions, one source of continued uncertainty centers around legacy transactions where fallback language

varies widely.

In the U.S. the Federal Reserve Bank of New York (“the Fed”) has developed, and is now publishing on a daily basis, the Secured Overnight Financing Rate (SOFR). Although there are a number of differences with LIBOR, this near-risk-free rate has been viewed by many as the leading replacement rate in U.S. financial markets for dollar LIBOR, similar to how the Sterling Overnight Index Average Rate (SONIA) has been a replacement rate for Sterling LIBOR in the U.K. While SOFR has been published since April 2018, the Fed has released a longer time series, from August 2014 to March 2018, with modeled pre-production estimated data on SOFR that now underlie the official rate publication. Outside the U.S., central banks and financial market authorities have also been charting courses toward new replacement benchmarks set to become active by 2021.

[Continue reading.](#)

4 Dec, 2020

---

### **S&P U.S. Not-For-Profit Private College And University Fiscal 2019 Median Ratios: Changing Landscape Leads To Weakening Credit Measures**

S&P Global Ratings’ key median indicators for U.S. not-for-profit private colleges and universities in fiscal 2019 saw credit quality deteriorate, reflecting the sector’s increasing challenges and vulnerability to a changing higher education landscape. A variety of stresses, including increased competition for a shrinking pool of students and a heightened focus on affordability, contributed to the declining metrics. Generally, most demand metrics, such as retention and graduation rates, declined year over year, which is consistent with overall industry trends. The only exception was student quality as measured by SAT scores, which improved slightly. Full-time equivalent (FTE) enrollment saw an overall decline in medians for our rated universe, although the ‘AA’ rating category increased due to certain rating movement in the category. Similarly, operating margins remained compressed year over year, although the sectorwide median operating margin remained positive along with a decline in median available resource ratios.

Although the fiscal 2019 medians do not reflect financial stress from COVID-19, we expect that the repercussions associated with the pandemic, which have contributed to a trend of unfavorable rating and outlook actions throughout the sector this year, will be evident in the medians based on fiscal 2020 results and even more so in fiscal 2021.

[Continue reading.](#)

24 Nov, 2020

---

### **S&P: U.S. Public College And University Fiscal 2019 Median Ratios Remain Generally Stable Although Operating Stress Looms**

The key median indicators for U.S. not-for-profit public colleges and universities were generally stable in fiscal 2019. The trend of mounting pressure on lower-rated entities continued; however, higher-rated institutions mostly maintained their overall enrollment, demand, and financial profiles. The fiscal 2019 metrics were recorded before the unprecedented disruption that the COVID-19

pandemic has caused in the sector. We expect to see the effects of operational and financial challenges related to the pandemic reflected beginning with the fiscal 2020 median credit metrics, with more pronounced changes likely in fiscal 2021. Although U.S. not-for-profit higher education entities faced increasing operational and financial challenges even before the pandemic, we believe fallout related to COVID-19 will both accelerate and amplify these pressures.

Due to the duration of COVID-19 and the gradual, uneven economic recovery, public colleges and universities face increasing challenges in many, if not all of their revenue streams. When colleges and universities sent students home in spring 2020, refunds were for services such as housing, dining, and parking. In addition, some states responded to budget pressures with end-of-year cuts to operating appropriations. This operating pressure was offset by management teams cutting discretionary spending, pausing or reevaluating capital projects, instituting layoffs or furloughs, and the receipt of federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funding. While fiscal 2020 budgets were undoubtedly affected, we expect to see an even more pronounced effect on operating margins in fiscal 2021, with many institutions forecasting pressured net tuition revenue (due to lower enrollments, limited tuition increases in fall 2020, more financial aid, and a higher number of in-state students), a lower level of state support (as states grapple to balance budgets as a result of suppressed economic activity due to the pandemic), lower auxiliary revenues (due to de-densified campuses and deferral or cancellation of athletic and campus events), and potential for sluggish fundraising in light of economic uncertainty. In recognition of this pressure, we revised our rating outlooks on a number of higher education institutions (both public and private) to negative in April 2020 (see "Outlooks Revised On Certain U.S. Not-For-Profit Higher Education Institutions Due To COVID-19 Impact," published April 30, 2020, on RatingsDirect). We also recently published a mid-year update that reflects our view of the pressures the sector faces ("Not-For-Profit Higher Education Mid-Year Sector View: Fall 2020 Enrollments will Drive Credit," Aug. 18, 2020).

[Continue reading.](#)

24 Nov, 2020

---

## **Fitch: CDC Coronavirus Vaccine Priorities Positive for Senior Living**

Fitch Ratings-New York-03 December 2020: Centers for Disease Control (CDC) guidance that skilled nursing facility (SNF) residents and employees should receive the coronavirus vaccine in the initial rollout is a credit positive for the sector, Fitch Rating says. The 14-member CDC advisory panel recommended to prioritize workers and the elderly in nursing homes to receive the first batches as part of Phase 1a of vaccine distribution. The CDC director, Dr. Robert Redfield, still needs to approve the recommendation, which is expected to be broadly followed by state governors.

The federal government expects 40 million doses of the coronavirus vaccine, enough for 20 million people, to be available by the end of the year. According to a report recently released by the American Health Care Association and the National Center for Assisted Living, coronavirus cases and deaths are rising in nursing homes, reaching levels not seen since reporting began in May.

The availability and distribution of the vaccine would be an immediate stabilizing factor for SNFs, which experienced a decline in occupancy since March, pressuring operating budgets. Lower occupancy is driven by a number of factors, including a reduction in post-acute care referrals from hospitals, beds being kept offline for the isolating or quarantining of coronavirus positive residents, and patients avoiding SNFs due to concerns such as family members not being able to visit.

The vast majority of SNFs that Fitch rates are part of the larger Life Plan Communities (LPCs) that offer a continuum of care that includes independent living (IL), assisted living/memory care and skilled nursing. Fitch rates approximately 160 LPCs. We revised our Outlook on the LPC sector to Negative in March and since then downgraded two LPCs and moved five Outlooks to Negative as a direct result of the effects of the coronavirus. This compares with YTD total rating actions of 20 downgrades, 11 Outlook revisions to Negative, and two credits placed on Rating Watch Negative. There have been no upgrades during this time.

Despite the stress on skilled nursing occupancy, the overall financial performance for LPCs remained largely stable due to steady levels of IL occupancy and a marked increase in IL sales in third-quarter 2020. The Coronavirus Aid, Relief and Economic Security Act funding directed at SNFs helped offset the effects of lower SNF occupancy on revenues. Skilled nursing occupancy has shown signs of recovering as referrals increased for post-acute care services as hospitals resumed elective surgeries, although this may subside somewhat with the surge in coronavirus cases. The vaccinations for SNF residents and staff should provide further velocity to financial recovery by increasing safety and confidence, and therefore admissions, in SNFs, as well as by reducing employee expenses related to quarantining or coronavirus-positive employees.

Contact:

Gary Sokolow  
Director, US Public Finance Healthcare  
+1 212 908-9186  
Fitch Ratings, Inc.  
Hearst Tower  
300 W. 57th Street  
New York, NY 10019

Margaret Johnson  
Director, US Public Finance Healthcare  
+1 212 908-0545

Sarah Repucci  
Senior Director, Fitch Wire  
+1 212 908-0726

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

---

## **[Fitch: New No Cruise Order Would Be Neutral for US Cruise Lines, Ports](#)**

Fitch Ratings-Chicago/New York-04 December 2020: Reimplementation of the Centers for Disease Control and Prevention's (CDC) No Sail Order would not result in immediate credit profile pressure on cruise operators and ports with sizable cruise operations, given we currently assume cruise operations will not meaningfully resume until 2H21, says Fitch Ratings. However, cruise operator and port credit profiles will become vulnerable to further deterioration if delays extend beyond this period and liquidity becomes an issue.

The CDC's previous No Sail Order that suspended cruise operations in the US from March 14 to Oct. 20 has expired. However, lawmakers reportedly began urging the CDC to reinstate the expired No

Sail Order after several people on a Seadream Yacht Club cruise to the Caribbean tested positive for coronavirus last month.

A Framework for Conditional Sailing Order, which includes phases and milestones cruise lines must reach to resume operations in a way that mitigates the risk of spreading the coronavirus, replaced the No Sail Order at the end of October. This framework remains in effect until the earliest of a government declaration that the coronavirus is no longer a public health emergency, a CDC recension or modification of the order, or Nov. 1, 2021.

Major operators, including Norwegian and Royal Caribbean, voluntarily extended their suspension on some or all cruises this week, in part to provide time to comply with the conditional sailing order. Norwegian suspended nearly all voyages through March 2021. Royal Caribbean's extensions vary by geography and date with some into April 2021. Carnival announced extensions on certain cruises last month, suspending some seven-day or longer cruises until November 2021.

We believe the cruise industry revenue recovery to the 2019 base line level will be among the slowest in the hard-hit travel and leisure sector, due in large part to the health-related risks of occupying close quarters. Global and domestic travel restrictions will also have an impact, as most cruise passengers travel to reach the cruise port. We do not envision a secular decline in demand for cruising, as the industry has successfully navigated prior, more localized health-related incidents, but anticipate the time to return to pre-pandemic profitability levels will be lengthy.

Credit profiles for Fitch's universe of cruise operators and ports with significant exposure to the cruise industry have deteriorated due to the virtual standstill of cruising. Our forecasts for cruise operators and ports assume cruise travel does not begin to meaningfully pick up until 3Q21. Credit profiles are currently supported in part by liquidity positions but reinstatement of the No Sail Order that extends beyond our expectations and leads to cash burn could add pressure.

Cruise operators have minimal liquidity headroom, even after significant capital access and some delaying of the delivery of new ships to conserve cash. We estimate roughly 10 to 17 months of cash on hand for the three major cruise operators, after servicing upcoming debt maturities. Two of the three have become fallen angels due to the effects of the pandemic, with operators' revenue projected to be down 84% in 2021 over 2019.

Fitch-rated ports have strong liquidity and most have cargo operations that provide an offset to declines in cruise revenue. However, given uncertainty for the industry, minimal cruise activity is assumed through 2Q21 and we are forecasting 2021 revenue at only 34% of 2019 levels. Downside risk from coronavirus-related disruptions has resulted in multiple negative rating actions. Canaveral Port Authority's Outlook was revised to Negative from Stable in April and ratings subsequently downgraded to 'A-/Negative from 'A'/Negative on Nov. 10 due to the severe deterioration of cruise revenues and resulting decline in financial performance. Port Miami's (A/Negative) and Broward County's (A/Negative) Outlooks were also revised to Negative.

Contacts:

Colin Mansfield, CFA  
Director, US Corporates  
+1 212 908-0899  
Fitch Ratings  
33 Whitehall Street  
New York 10004

Stacey Mawson  
Director, Infrastructure & Project Finance  
+1 212 908-0678

Carla Norfleet Taylor, CFA  
Senior Director, Fitch Wire  
+1 312 368-3195

Media Relations: Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: [elizabeth.fogerty@thefitchgroup.com](mailto:elizabeth.fogerty@thefitchgroup.com)  
Sandro Scenga, New York, Tel: +1 212 908 0278, Email: [sandro.scenga@thefitchgroup.com](mailto:sandro.scenga@thefitchgroup.com)

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

---

## **[Here's What the Water Sector Wants from Congress and President-Elect Biden.](#)**

In a [letter](#) to President-elect Joe Biden last week, the American Water Works Association (AWWA) urged the incoming administration to prioritize COVID-19 relief for water utilities and investment for the overall water infrastructure sector.

The letter, authored by association president Melissa Elliott, cites AWWA research that revenue shortfalls at U.S. drinking water utilities may reduce economic activity by \$32.7 billion and cost 75,000 to 90,000 private-sector jobs. Drinking water utilities are expected to see revenues from customer payments drop by nearly \$14 billion, according to AWWA estimates. This is the result of the elimination of water shutoffs for non-payment, increased late payments due to high unemployment, reductions in non-residential water demands, and the addition of fewer new customers due to economic stagnation.

The letter explains that while the CARES Act passed earlier this year did provide funding relief to state and local governments, the act also carried a provision prohibiting the use of those funds to offset lost local utility revenues. AWWA says many utilities, particularly those serving small to medium-sized communities, are at risk resulting from diminished operating revenues. Not only do these lost revenues mean local communities are less able to renew, repair, and sustain aging infrastructure and treatment facilities, but some are feeling the effects in their ongoing operating finances, which may result in the loss of operators who are needed to ensure the utility is in regulatory compliance, the association says.

The letter calls on the president-elect and Congress to work together on the next COVID-19 relief package and urges that it include:

1. Funding to help low-income customers pay their water bills during the current pandemic emergency;
2. Funding to help those local water utilities that have suffered significant revenue losses due to the pandemic, so that they can continue to operate and provide safe water services; and
3. A definitive limitation to any mandated moratorium on disconnection of water service for non-payment, if such as moratorium is included in a legislative package.

Finally, the letter from AWWA also urged President-elect Biden to take up water infrastructure investment as a priority in his administration, recommending the following:

1. In the 2021 budget, seek fully authorized funding for the WIFIA and SRF programs.
  2. Work with Congress to strengthen the effectiveness of WIFIA in this manner
  3. Reauthorize WIFIA and increase authorized funding.
  4. Authorize an increase in WIFIA staff to help get loans out the door more quickly.
  5. In negotiating changes to the tax code, ensure that the tax-exempt status of municipal bonds is protected, and that the tax advantages of advanced refunding of these bonds is restored.
- Water Sector Calls on Congress to Assist Low-Income Customers Amid Pandemic**

Meanwhile, as the COVID-19 pandemic persists in the United States, AWWA and other water sector groups including the Water Environment Federation (WEF), the Association of Metropolitan Water Agencies (AMWA), National Association of Clean Water Agencies (NACWA), National Rural Water Association and WateReuse Association, are calling on Congress for increased funding. Similar to the recommendations to the incoming Biden administration, the groups say utilities need more help to rebound from the pandemic and invest in critical infrastructure, as well as to assist low-income customers pay bills. The organizations' goals were laid out in a [joint letter](#) to Congressional leaders.

On the subject of assistance to low-income customers, the letter notes two versions of the HEROES Act approved by the House of Representatives this year (H.R. 6800 and H.R. 925) contained language to establish a \$1.5 billion Low-Income Household Drinking Water and Wastewater Assistance program, which would provide funds to local water and wastewater utilities to offset water rates charged to low-income customers during the pandemic.

Water systems report that delinquent residential water accounts have increased dramatically over the past several months – especially among low-income customers – so this type of targeted assistance is vital to getting these vulnerable customers back on track while also providing a needed stream of operational funds to water and wastewater systems. The associations request that this or a similar low-income customer assistance program is maintained in any pandemic relief package.

[Click here](#) to read more from the full joint statement from the water sector to House Speaker Nancy Pelosi (D-Calif.) and Senate Majority Leader Mitch McConnell (R-Ky.).

WATER AND FINANCE MANAGEMENT

BY WFM STAFF

NOVEMBER 23, 2020

---

## **[Federal Relief Proposals Aren't Enough to Thwart Some of the Worst Transit Cuts.](#)**

**As Congress debates proposals to give public transit half of what was sought, officials warn of cuts that would gut regional economies.**

Officials at some of the largest public transit systems in the U.S. say that sweeping cuts to service and staffing are in store if a second federal pandemic relief package does not arrive soon. And the transit aid proposals currently being considered in Congress may not be enough to prevent drastic changes that would be difficult to reverse in several big cities, leaders and advocates say.

That includes in Congress's own backyard, where staffers, interns, Capitol Hill service workers and a tiny handful of lawmakers are normally some of the most reliable users of the Washington, D.C., Metro. Now rail ridership on the second-most-used rail transit network in the U.S. is down nearly 90 %, and WMATA faces an approximate \$500 million budget gap starting in FY 2022.

To close it, WMATA general manager and chief executive officer Paul Wiedefeld laid out a plan on Monday that would transform the system from metropolitan lifeblood to anemic last resort. It includes eliminating weekend rail service, reducing weekday rail service to 30-minute headways, closing the rail system at 9 p.m. and shuttering 19 stations entirely, and eliminating more than 30% of the bus routes that existed before the pandemic. This would be on top of 1,400 positions that are already in the process of being eliminated, in order to close a \$167 million budget hole in FY 2021, Wiedefeld said.

D.C.'s proposed changes are not inevitable. A swift vaccine distribution and accompanying economic recovery could be cause for dialing back some of the cuts, Wiedefeld said, as would the prompt arrival of a second relief package from Congress.

On Tuesday, a bipartisan group of senators outlined a \$908 billion stimulus that includes \$15 billion for public transit — less than half of what public transit advocates say is needed. That amount may be the best-case scenario for federal transit funding. In a major concession, Democratic leaders have backed the bipartisan proposal, but Senate Majority leader Mitch McConnell rejected it and is pushing instead a version of a bill he previously failed to pass that includes no funding at all for transit.

Transit leaders say that \$15 billion in aid would be better than nothing. Chad Chitwood, a spokesperson for the American Public Transportation Association, which is calling for \$32 billion in transit funding, called it a "promising step in the right direction."

But officials stressed that it would not be enough to return to full service levels, or even to avoid some of the harshest cuts currently taking shape. Assuming that his agency received the same portion from a \$15 billion relief fund as it did from the CARES Act in March, San Francisco Municipal Transportation Agency director Jeffrey Tumlin said it would fail to prevent the nearly 22% reduction in workforce and dramatic service cuts that the agency projects will be necessary to close the \$600 million in losses it faces over the next two years.

"It's good but it's worse than our worst-case scenario that is leading us to 1,200 layoffs," he said of the possible relief funding, explaining that \$15 billion would not put the agency over the threshold for aid that it says it requires to avoid those cuts.

In an SFMTA board meeting on Tuesday, Jonathan Rewers, a senior budget manager at the agency, clarified what would be necessary. "Only at the highest amount — the amount in the HEROES Act — do we have a chance at closing the deficits we project over the next two years," he said. That earlier more robust HEROES Act proposal would have funded transit at the requested \$32 billion.

The \$15 billion figure in the stimulus agreement represents a middle ground between proposals from both sides, according to a spokesperson for Senator Mark Warner, a Virginia Democrat who represents areas served by WMATA and is one of the authors of the compromise. WMATA's proposed cuts "will have a dramatic effect on the functions of the federal government as well as for constituents across the tristate area," Warner said at a press conference Tuesday. "So we made, I think, the right kind of investment in public transit."

The distribution of those funds will also be important, advocates said. The CARES Act distributed

\$25 billion to public transit agencies and has enabled many systems to continue operating this far. But those resources were never designed to last forever, and for big-city agencies with budgets that rely heavily on passenger revenues, they dwindled faster.

For example, New York City's Metropolitan Transportation Authority — far and away the largest transit operator in the U.S.— received \$3.9 billion in CARES relief, or slightly more than 15% of the available aid. Yet it carries 34% of the nation's metro rail and bus trips, according to APTA data, and the money lasted just four months. The agency now warns it will need to cut subway and bus service by 40% and commuter rail by 50% and lay off more than 9,000 workers if the federal government fails to allocate \$12 billion.

"We need to get the size of the pot right and the distribution right to save America's cities," said Danny Pearlstein, the policy and communications director at Riders Alliance, an advocacy group in New York City. To highlight what he called the inadequacy of the \$15 billion figure, he added: "There would only be \$3 billion left once MTA gets its twelve."

In Washington, D.C., Wiedefeld said that his agency would need more than \$700 million to return to normal levels of operation and reverse all staffing and service cuts. In addition to the exact amount, timing matters, too, with more than 10% of the agency's workforce already hanging in the balance, Wiedefeld said.

"If we don't get a significant amount from Congress, or it doesn't come until late in the first or second quarter of the year, it will be hard to pull this back," he said. "If money came immediately to pull back 1,400 jobs, I'd do that. But if that does not occur until April or May, they're already gone. Then I'm trying to save jobs for the next fiscal year."

At the current trajectory, the agency projects ridership to return to 34% of its 2019 levels by June 2022 and to take years to fully rebound.

Until then, "we have to live under a balanced budget with no other resources to turn to," Wiedefeld said. "This is the reality of what we're up against."

The impact of the proposed cuts on the D.C. economy would be difficult to overstate. The transit system outlines the region's future, with one 2015 study estimating that 78% of the next 15 years in planned commercial, residential and retail construction would occur within a half-mile of a Metro station. It's not clear what would become of those blueprints if service was gutted. In addition to weekday commuters, the D.C. rail system is also a mode of choice for millions of annual visitors to the region's monuments and museums; cuts to weekend service would stymie the return of that tourism.

"Anyone who comes here from around the globe uses our system, so it does reflect at a national level," Wiedefeld said. "What does this reflect when the nation's capital can't provide a fundamental service that major metropolitan areas provide worldwide?"

Yet these challenges reflect similarly grim forecasts in other U.S. cities. In the New York City region, the MTA's proposed cuts would result in an estimated loss of \$65 billion in gross domestic product annually and cost 450,000 jobs in the area by 2022, according to a report by the NYU Rudin Center for Transportation Policy and Management and New York-based consulting firm Appleseed.

The changes will make it difficult for the MTA to bring back riders to its network of subways, buses and commuter trains as other transportation options will become more attractive, Pat Foye, the agency's chief executive officer, said in an interview last month with Bloomberg TV.

“Cutting it back also will cause some of our customers to say, ‘you know what, it’s not worth it,’” he said. “We won’t get their revenue. We won’t get their service and that’s just a terrible place for any transit agency to be.”

Meanwhile, D.C. buses have continued to serve roughly 200,000 daily riders, or about 40% of normal ridership, which is a much larger portion than the rail system has seen. Ron J. Thompson Jr., a transit equity organizer at the advocacy group Greater Greater Washington, said that cuts could strand low-income bus riders from jobs, school, groceries and healthcare. As the region pulls itself out of the Covid-19 recession, he said, “you’re setting us up for one of the most uneven recoveries, ever, in our nation’s history.”

## **Bloomberg CityLab**

By Laura Bliss

December 3, 2020, 3:24 PM PST Updated on December 4, 2020, 2:21 PM PST

— *With assistance by Michelle Kaske*

---

### **[The MTA Could Be the Last to Tap the Fed’s Muni Facility. Wall Street Watchers Fret Its End.](#)**

New York’s Metropolitan Transportation Authority is on track to grab one last slug of federal pandemic aid before it and other public authorities lose a key source of relief at year’s end: the Federal Reserve’s municipal lending program.

The MTA said it plans to sell nearly \$3 billion in bonds by the end of the year to the Fed’s Municipal Liquidity Facility, a move that will help the agency cope with a plunge in ridership and close a \$1.1 billion budget deficit this year, according to a presentation from CFO Robert Foran at a Nov. 18 board meeting.

Five Fed programs will expire at the end of this year, even as Covid-19 cases soar and some state governments impose partial shutdowns to control the virus’ spread. The programs were created or revived earlier this year to provide a financial bridge for a wide range of institutions affected by the pandemic.

Several facilities were designed for the large banks, bank trading desks, and money-market funds that were squeezed during the short-term rush for cash in the early stages of the pandemic. Yet the programs that are closing mostly cover borrowers that could face financial pressure over a span of years, such as large corporations, midsize businesses, nonprofits, and state and local governments.

Municipal-market and Wall Street strategists have argued that the MLF in particular should be extended, because it can take months or even years for state and local governments to experience the full impact of recessions on their budgets from trends such as declines in property values. Municipalities are required to file 30 days in advance before they tap the facility, meaning that any other eligible state or local government that wants to borrow from the Fed has until Nov. 30 to file their own notice of interest.

“We still don’t know what the next three, four, five, or even six months will look like. It makes sense to me that they extend it just in case there are high levels of shutdowns or something unexpected

happens,” said Tom Kozlik, head of municipal strategy and credit with Hilltop Securities. “I think [the municipal lending] program was set up for such an event. And it should be extended.”

It wasn't. In a letter last week calling to Fed Chairman Jerome Powell to let the programs expire and return unused funds, Treasury Secretary Steven Mnuchin said that he believes the Fed's programs were successful, citing declines in yields on highly rated municipal bonds. And in a response published Friday, Powell said that the Treasury does have the option of using existing funds for “any Federal Reserve lending facilities that are needed to maintain financial stability and support the economy.”

Still, muni bonds haven't rebounded to prepandemic levels, unlike corporate debt markets. The iShares National Muni Bond exchange-traded fund (ticker: MUB) has climbed about 15% since the end of March, compared to the iShares iBoxx \$ Investment Grade Corporate Bond ETF's (LQD) roughly 30% rally.

Citigroup strategist Vikram Rai, another vocal supporter of extending the MLF, said in a Nov. 23 note that he thinks the Treasury made the wrong call. “For now, the markets have largely brushed off the announcement, which is expected. But it would be easier to trigger weakness and volatility. For [example], say a high-profile deal faces weak demand,” he wrote. “It could be enough to have a ripple effect and fan investor fears—this in turn could cause volatility spikes.”

Mnuchin also pointed out that only two state and local governments had used the facility as of Oct. 31: The MTA and the state of Illinois. Their borrowing combined adds up to a combined \$1.7 billion, though that sum will rise to \$4.6 billion after the MTA's next planned use of the facility. That is indeed small compared to the broader market, which totals \$3.9 trillion.

But strategists say that the MLF didn't need to be used extensively to provide a backstop to the market.

“The importance of the MLF was always the fact that it was there, even if it wasn't going to be used,” said Tom McLoughlin, fixed-income strategist at UBS. “As a consequence, it calmed a lot of nervous investors that there was this opportunity to borrow as a last resort.”

## **Barron's**

By Alexandra Scaggs

Nov. 24, 2020 6:30 am ET

---

### **[From Service Cuts to Budget Shortfalls: What Is in Store for American Transportation Agencies?](#)**

**With a continued historic decline in ridership numbers and no additional federal help in sight, American transportation agencies are facing some serious fiscal challenges.**

These transit agencies, once considered the backbone of metropolitan economies and moving a large number of passengers to and from work, are now running virtually empty with no real solution in sight for the foreseeable future. Although the recent news about a COVID-19 vaccine provided a glimmer of hope for many local and state economies, transportation agencies still have a long way to go before reaching their pre-pandemic ridership numbers and getting back to some state of

normalcy. Furthermore, given the vital role transportation agencies play in metropolitan mobility, shutting down isn't an option for any of them.

In this article, we will take a closer look at the current challenges for American transportation agencies and what the future holds.

[Continue reading.](#)

**municipalbonds.com**

by Jayden Sangha

Nov 25, 2020

---

## **'Existential Peril': Mass Transit Faces Huge Service Cuts Across U.S.**

**Reeling from the pandemic, transit agencies are grappling with drastic reductions in ridership and pleading for help from Washington.**

In Boston, transit officials warned of ending weekend service on the commuter rail and shutting down the city's ferries. In Washington, weekend and late-night metro service would be eliminated and 19 of the system's 91 stations would close. In Atlanta, 70 of the city's 110 bus routes have already been suspended, a move that could become permanent.

And in New York City, home to the largest mass transportation system in North America, transit officials have unveiled a plan that could slash subway service by 40 percent and cut commuter rail service in half.

Across the United States, public transportation systems are confronting an extraordinary financial crisis set off by the pandemic, which has starved transit agencies of huge amounts of revenue and threatens to cripple service for years.

The profound cuts agencies are contemplating could hobble the recoveries of major cities from New York to Los Angeles and San Francisco, where reliable transit is a lifeline of the local economies.

Trains and buses carry the office workers, shoppers and tourists who will help revive stores, restaurants, cultural attractions, hotels and other key businesses that have been battered by the outbreak.

The financial collapse of transportation agencies would especially hurt minority and low-income riders who tend to be among the biggest users of subways and buses.

For months, transit officials around the country have pleaded for help from the federal government, but with no new lifeline forthcoming and many systems facing December deadlines to balance their budgets, agencies have started to outline doomsday service plans that would take effect next year.

A glimmer of hope emerged in recent days, when a bipartisan group of lawmakers in Congress proposed \$15 billion for public transit agencies as part of a \$908 billion framework for a pandemic-relief package.

The plan, which President-elect Joseph R. Biden Jr. has said he supports, would provide nearly half

of the \$32 billion that transit leaders have lobbied for in recent months and that is intended to provide short-term relief.

But it has yet to be endorsed by Senator Mitch McConnell of Kentucky, the Republican majority leader, who has proposed a smaller stimulus plan that contains no financing for public transit. On Friday, Nancy Pelosi, the House speaker and a Democrat, expressed optimism that a compromise deal could be achieved before the end of the year.

Even if they receive some aid, transit agencies in some large cities have experienced such severe financial losses that officials say they will be forced to pare back service to save operating funds while serving riderships that are far below normal levels.

It is unclear whether ridership will ever fully return to pre-pandemic levels even after effective vaccines become widely available. Some commuters may end up working from home permanently; others may abandon public transit if cuts cause service to deteriorate.

"This is existential peril," said Ben Fried, a spokesman for TransitCenter, an advocacy group.

"The economic rationale for cities is that people are in close proximity and can do a lot of things without spending a lot of time traveling from place to place," Mr. Fried said. "If the transit network is seriously diminished in a dozen or so cities that are a focal point for a large share of the nation's economic output, then that's going to have severe impacts on the national economy."

Since the pandemic swept across America in the spring, bringing urban life to a standstill and ushering in new work-from-home norms, nearly all of the sources of money that public transit relies on have been pummeled.

Ridership, and fare revenue along with it, vanished practically overnight after lockdown orders were enacted. As the economy slid into recession, the sales and income tax revenue used to finance many transit networks plunged. And cities and states sunk into their own financial crises, threatening government subsidies for public transit systems.

New York City's transit agency, which is grappling with the biggest losses of any system in the country, forecasts a \$6.1 billion deficit next year. Officials in Boston are dealing with a \$600 million budget hole, and Chicago's agency anticipates a \$500 million shortfall.

By September, nationwide ridership on mass transit had crept back to nearly 40 percent of its pre-pandemic levels from a low of 19 percent in April, according to the American Public Transportation Association, a lobbying group.

But the numbers have plateaued in recent weeks as the virus surges throughout the country, making this the longest and most severe period of suppressed ridership for any of the nation's public transit systems.

In New York, ridership is at 30 percent of pre-pandemic levels, while on rail lines in Washington and San Francisco, it is below 15 percent of its usual levels.

"The effect on ridership in each of our agencies — subway, buses, Metro-North, Long Island Railroad — is dramatically worse than even in the Great Depression," said Patrick J. Foye, chairman of the Metropolitan Transportation Authority, which runs New York City's subway and buses and two commuter railroads.

Many big city systems rely on fare revenue more heavily than their counterparts in smaller cities and

rural areas and have tended to get a smaller share of federal support relative to their size.

Fares contribute 70 percent of the operating budget in San Francisco, 40 percent in New York and Washington and about 33 percent in Boston.

There is no legislative text yet for the bipartisan proposal that Republican and Democratic Senators are now negotiating, nor are there specifics for how the transit aid would be divided among agencies.

"This is not limited to big, urban cities and states — lots of rural areas depend on buses that also get federal funding — so it has some degree of bipartisan support," Senator Chuck Schumer of New York, the Democratic minority leader, said in an interview. "But there are some who have never wanted any federal help for mass transit and that's who we are up against."

The stimulus package that is being negotiated is likely to face opposition from some liberal lawmakers who consider it insufficient and some conservatives who are unwilling to add to the national debt.

"The real answer to the economic problems is to get rid of what causes the economic problems and they're caused by economic dictates from governors that forbid commercial activity," Senator Rand Paul, Republican of Kentucky, told reporters on Tuesday. "I'm not for borrowing any more money."

When transit agencies have faced financial shortfalls in the past, they have typically turned to city and state governments or they have lobbied elected officials for new sources of revenue like dedicated taxes.

But many municipal and state governments are grappling with their own financial problems, forcing transit agencies to look to Washington.

"Unlike some other transit properties, we don't have our own revenue source, we have two sources of revenue, it's either the farebox or the subsidies from our local and state government," said Paul J. Wiedefeld, the general manager of the Washington Metropolitan Area Transit Authority. "They are both under tremendous financial distress right now, so where do we turn?"

Many urban transit systems have exhausted the money they got from an earlier federal stimulus bill and have also imposed service cuts.

In New York, overnight subway service has been suspended since May. In Los Angeles, bus service has been slashed nearly 30 percent and rail service has also been cut. And the Bay Area Rapid Transit rail system in San Francisco has ended late night service and pushed wait times for trains from 15 to 30 minutes.

The cuts have helped stabilize operations and allowed them to continue providing at least limited service. But officials warn that the cutbacks could become permanent and that more could be added at the beginning of next year, a devastating prospect for the essential workers and low-wage riders who continue to rely on public transit.

Around 2.8 million American workers in essential industries like health care, grocery stores and pharmacies used public transit to get to work in 2018, according to an analysis of census data by the TransitCenter. That was 36 percent of all transit commuters in the U.S. work force that year, the group said.

"We have been the ones that have kept the economy of this country afloat because we do not have the luxury to work from home," said Mayra Romero, 43, a restaurant worker in Boston who travels

by bus from her home in nearby Chelsea, Mass. “We have been the ones who have been risking our lives and exposing ourselves.”

Margaret Dunn, who lives in Clinton, Md. and works at a hotel in Washington, used to work until midnight before she was laid off in March. Now, as she waits for a call to return to her job, she worries that service cuts could leave her with few travel options once her shift ends.

“We direly need some help.” she said, adding that she may have to rely on Uber or her husband to drive her.

In Washington, transit officials say that if the system receives sufficient federal assistance they will revive service as much as possible to help coax riders back as vaccines are distributed and the cadence of normal life begins to return.

But in other cities, additional federal aid may not guarantee the return of service. In Boston, New York and San Francisco, transit officials have said they plan to recalibrate service to match what they expect to be long-lasting, depressed levels of ridership.

“With the first tranche of money we got, we immediately put it in place to plug the budget gap because there was so much uncertainty, but as a consequence that money will run out this fiscal year,” said Steve Poftak, the general manager of the Massachusetts Bay Transportation Authority, which serves the Boston area. “We want to do as much as we can in this period of low ridership so we have a reserve in place that we can apply to fiscal year 2022.”

“That’s been our approach,” he added. “Preserve our service now, but also keep an eye toward the future.”

Transit experts worry that with more cuts public transportation agencies could plunge into a “death spiral,” where increasingly unreliable service keeps riders away, pushing systems deeper into financial distress.

With public health officials expecting the distribution of vaccines to begin early next year, agencies could wind up cutting service just as riders return to their commutes.

“Transit is not going to be there for people at the exact moment they are ready for transit again,” said Nick Sifuentes, executive director of the Tri-State Transportation Campaign, an advocacy group. “We are looking at millions of people getting ready to head back to their workplaces and the thing they relied on to get there won’t be reliable anymore.”

## **The New York Times**

By Christina Goldbaum and Will Wright

Dec. 6, 2020

---

## **[Fitch: Coronavirus Muddies 2021 Outlook for U.S. Transportation Infrastructure](#)**

Fitch Ratings-New York-02 December 2020: U.S. transportation infrastructure faces a mixed outlook for 2021 with some segments returning to pre-pandemic levels quicker than others, according to

Fitch Ratings in its 2021 outlook report for ports, toll roads and airports.

Fitch's 2021 Sector Outlook for U.S. transportation infrastructure is Improving, while Fitch's 2021 Rating Outlook is Negative. The Sector Outlook reflects Fitch's expectation for improved performance in 2021 as compared to 2020 for the two largest sectors – Airports and Toll Roads. "Toll roads and cargo ports are expected to recover to 2019 levels by 2022," said Senior Director Emma Griffith. "By contrast, airports and cruise ports face a more uphill battle with recovery not likely to materialize until 2024 or perhaps even later." The Negative Rating reflects 57% of U.S. transportation ratings carrying Negative Outlooks or Watches.

Cargo-focused ports have outperformed Fitch's expectations thus far, though performance will face pressure in 2021 due to a worsening economy and delays in fiscal stimulus. Conversely, the CDC's no-sail order in place for much of this year has severely hampered performance for cruise ports with pre-pandemic recovery not likely for several years.

Another resilient sector has been toll roads with traffic levels largely returning to pre-pandemic levels before leveling off somewhat last quarter. "Whether traffic recovers or backslides depends upon the path of the virus and related lock-downs, especially regarding commuter traffic from office workers," said Senior Director Scott Monroe.

The segment that may face the most formidable challenge over time is airports due to the unprecedented drop-off in passenger traffic. "Strong fee setting flexibility and liquidity will keep most airports numbers stable, though time will tell if that will be enough to sustain them with pre-pandemic recovery in passenger traffic to remain elusive for several years," said Senior Director Seth Lehman.

'Fitch Ratings 2021 Outlook: U.S. Transportation Infrastructure' is available at [www.fitchratings.com](http://www.fitchratings.com)'.

Contact:

Emma Griffith  
Senior Director  
+1 212 908 9124  
Fitch Ratings, Inc.  
300 W 57th St  
New York, NY 10019

Seth Lehman  
Senior Director  
+1 212 908 0755

Scott Monroe  
Senior Director  
+1 415 732 5618

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

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

---

## **NFMA White Paper on Best Practices in Cybersecurity Risk Disclosure for State & Local Governments in Municipal Offerings.**

On November 30, 2020, the NFMA released the final version of its paper on cybersecurity risk disclosure.

- [White paper](#), dated November, 2020
- [Press release](#), dated November 30, 2020

---

## **SEC Needs to Take 'Bottom to Top' Review of Fixed Income Markets: Crenshaw**

**The next chairman or chairwoman will likely “take a hard look at the commission’s approach to ESG,” Crenshaw said.**

Once Securities and Exchange Commission Chairman Jay Clayton departs at year-end, the four member agency — which will consist of two Republicans and two Democrats — can likely find bipartisan agreement on fixed income market structure issues, according to SEC Commissioner Caroline Crenshaw.

“Right now, our fixed income markets are regulated using a regime that ... has been imported from the equity markets,” Crenshaw, a Democrat, said Friday during the virtual Georgetown Financial Markets Quality Conference. “This can cause problems. Fixed income securities are traded in a very different way.”

The commission should take “a bottom to top look at the corporate and muni markets. ... We need to understand how these bonds are actually traded and how these things are happening on the ground as we build a regulatory system around it,” Crenshaw said.

SEC Commissioner Elad Roisman, a Republican, added that “there is still a lot we can do when it comes to fixed income.”

Retail investors, Crenshaw said, “have more exposure, perhaps more than anyone else, to municipal bonds, both directly and indirectly through various funds.”

The SEC, she continued, needs “to do a better job of ensuring that all investors have the information they need to make the best investment decisions they can. It’s especially an issue for retail investors because they often don’t have access to the same type of information that nonretail investors have access to.

“That’s true across all products, but it’s especially true in the muni markets where a lot of bonds are thinly traded and there’s very little pre-trade transparency.”

### **Next SEC Chair’s Priorities**

The next chairman or chairwoman will likely “take a hard look at the commission’s approach to ESG,” especially those focused on climate risk, Crenshaw said.

Added Roisman: ESG is “a conversation that will be ongoing; it’s one that I can’t imagine we’re not going to be having.”

## **ThinkAdvisor**

By Melanie Waddell | November 23, 2020 at 11:45 AM

---

### **NABL Submits Letter to Treasury and IRS.**

On Wednesday, December 3, 2020, the National Association of Bond Lawyers (NABL) submitted a letter to the U.S. Department of the Treasury (“Treasury”) and Internal Revenue Service (IRS) requesting an extension of IRS Notice 2020-53 through December 31, 2022. The notice, released on July 1, 2020, in response to the coronavirus pandemic provides relief relief to bond issuers, operators, owners and tenants of qualified residential rental projects and qualified low-income housing projects financed with exempt facility bonds, and state agencies that have jurisdiction over these projects, from otherwise-applicable federal tax law compliance requirements.

Read the full letter [here](#).

---

### **The Fastest-Growing Fixed Income Sector: Taxable Muni Bonds**

With a Joe Biden administration looming, municipal bonds have been in play for fixed income investors. One pertinent idea is a taxable municipal bond, the focus of the Invesco Taxable Municipal Bond ETF (BAB).

BAB seeks to track the investment results of the ICE BofAML US Taxable Municipal Securities Plus Index. The underlying index is designed to track the performance of U.S. dollar-denominated taxable municipal debt publicly issued by U.S. states and territories, and their political subdivisions, in the U.S. market.

According to Investopedia, taxable municipal bonds are “issued by a local government, such as a city, county, or related agency, to finance projects that the federal government will not subsidize, and it is not tax exempt.”

As its namesake suggests, the BAB ETF hearkens to Build America Bonds (BAB), which, courtesy again of Investopedia, “were created under the American Recovery and Reinvestment Act (ARRA) of 2009 and, although taxable, have special tax credits and federal subsidies for either the bond issuer or holder. Taxable municipal bonds are popular among institutional investors and mutual funds that cannot take advantage of other tax breaks.”

[Continue reading.](#)

ETF TRENDS

BEN HERNANDEZ

DECEMBER 2, 2020

---

## **[Demand for Taxable Munis To Continue in 2021: Kazatsky \(Radio\)](#)**

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence: stimulus talks revived and 2021 outlook for munis. Hosted by Paul Sweeney and Vonnie Quinn.

[Listen.](#)

### **Bloomberg Radio**

December 4, 2020 — 10:29 AM PST

---

## **[Why Taxable Municipal Bonds Are Booming and How to Invest in Them.](#)**

Municipal bonds and tax-exempt debt are no longer synonymous. Taxable municipal bonds are the fastest-growing sector in U.S. fixed income. This year, issuance has totaled more than \$170 billion, double the \$85 billion sold in all of 2019. The total market has grown to \$700 billion—sizable but still below the \$3.7 trillion tax-exempt muni market.

Taxable munis offer an attractive alternative to corporate bonds, with higher yields and lower historical default rates. The market's obscurity is part of the reason for yields that can be 0.5 percentage point to 1.5 percentage points higher than those of similarly rated corporate debt.

"Issuance has exploded, and we expect that trend to continue. It's about 35% of total municipal issuance," says Peter Hayes, head of the municipal bond group at BlackRock. "Investor appetite is growing domestically and internationally."

[Continue reading.](#)

### **Barron's**

By Andrew Bary

Nov. 27, 2020 11:36 am ET

---

## **[Broker-Dealer Settles Charges of MSRB Trade Reporting Failures.](#)**

A broker-dealer [settled](#) FINRA charges of failing to accurately report trades to the MSRB.

In a Letter of Acceptance, Waiver and Consent, FINRA determined that the broker-dealer did not report its trades in increments of seconds, as required under MSRB Rule G-14 ("Reports of Sales or Purchases"). According to the Letter, for an approximately three-year period, the firm reported all trades as being done at "00" seconds, rather than the exact number of seconds. This resulted in 147,000 trade reporting violations. Further, FINRA found that the firm had 167 manual trade reporting failures also involving failure to report the correct time of trade. These reporting failures also resulted in violations of MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors").

FINRA also determined that the broker-dealer violated MSRB Rule G-27 ("Supervision") by failing to follow the requirements under its written supervisory procedures to (i) execute a comparison between the firm's records and corresponding contra party trade reports to ensure the accuracy of the times of trade it reported and (ii) specify the frequency of its review of its trade reports, and designate a supervisor for such review.

To settle the charges, the broker-dealer agreed to a (i) censure and (ii) \$25,000 fine (\$15,000 for the MSRB Rule G-14 and G-8 violations and the balance for the MSRB Rule G-27 violations).

## **Commentary**

When technology is not working, that failure creates the capacity for a remarkable number of violations; e.g., in this instance, 147,000 violations due to the technology failure vs. 167 errors due to the manual process failure. Of course, the technology is indispensable, but the numeric difference in the number of failures really illustrates the importance of having compliance procedures that review the end results of technology processes.

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

November 20 2020

---

## **[BAB: Taxable Munis Still Offering Value](#)**

### **Summary**

- Taxable munis offer higher after-tax yields for everyone but those in the highest tax brackets, compared to tax-exempt munis.
- With markets hitting new highs, taking on less risk seems prudent. As a non-leveraged ETF, BAB offers a path to do so.
- Municipals should perform well in 2021, if states and cities get federal relief, which is more likely under a Biden administration.

[Continue reading.](#)

### **Seeking Alpha**

Nov. 25, 2020

---

## **[Hawkins Advisory re: Rev. Proc. 2020-49 - Extension of Ability to Hold Telephonic TEFRA Hearings.](#)**

In consideration of the ongoing Covid-19 pandemic, Treasury and the Internal Revenue Service have extended the temporary guidance originally provided in Rev. Proc. 2020-21, published in May of 2020. The temporary guidance allows issuers of private activity bonds to hold the public hearings required by the TEFRA rules by teleconference until December 31, 2020. The release on November 4, 2020 of Rev. Proc. 2020-49 extends the period during which issuers may hold telephonic hearings to September 30, 2021.

## **California City That Sold Pension Debt Now at Fiscal Brink.**

- **West Covina plumbed reserves to meet costs, state auditor says**
- **City has no recovery plan and risks bankruptcy, audit says**

West Covina, California, which sold \$204 million of pension bonds in July, is at the fiscal brink because of its ineffective management and raiding of reserves, according to a report Tuesday by State Auditor Elaine Howle.

The southern Californian city of about 105,000 residents helped cover salary and benefit costs for its public safety workers by siphoning from reserves, halving its year-end balance in fiscal 2019 to about \$10 million over four years, the report said.

The city, which has about \$227 million in outstanding municipal debt, has made “questionable” financial decisions, has likely understated the impact of the coronavirus pandemic and doesn’t have a fiscal recovery plan, raising the risk of bankruptcy, according to Howle’s report.

“West Covina is at high risk of being unable to meet its future financial obligations and provide effective city services,” the audit said. “If West Covina is unable to resolve its structural deficit, it risks becoming embroiled in the lengthy and complex process of declaring municipal bankruptcy.”

In July, West Covina’s financing authority sold \$204 million of taxable lease-revenue debt rated A+ by S&P Global Ratings, with the top yield of 3.89% for a bond maturing in August 2044. A bond due in August 2038 traded Monday at a 3.12% yield, according to data compiled by Bloomberg.

Proceeds of the sale went to paying down the city’s unfunded pension liability, which would initially reduce its annual pension obligation to the California Public Employees’ Retirement System. But that leaves the city on the hook for required debt payments that gradually increase every year by 2044 and still at the risk of higher pension bills should the retirement system underperform its target and require more from municipal governments to make up the difference, the audit said.

West Covina plans to sell land and use the proceeds to pay down its debt obligations, according to the report. But, such “large one-time revenue sources will be insufficient on their own to reverse the city’s negative financial trend and rebuild its reserves,” it said.

City Manager David Carmany said in an interview that he and the finance director were brought in recently to address the city’s fiscal issues. With public safety expenses accounting for about 80% of West Covina’s general fund, Carmany said that officials are negotiating with unions to help defray the burden, and police officers agreed to contribute more toward their pensions. The city may also disband the fire department and instead contract with Los Angeles County for its fire services, a decision that the council may make early next year, he said.

“We are aggressively exploring all options,” Carmany said. “This community is going to be facing some tough choices.”

### **Bloomberg Markets**

By Romy Varghese

## **Future Returns: Insured Munis Offer Stable Income and Peace of Mind**

Investors have had plenty to worry about in 2020, and this is particularly true for anyone who counts on municipal bonds to generate stable and, in many cases, tax-free income for their portfolios.

Covid-19 has put pressure on a wide range of municipal bond issuers, from state and local governments, to universities, senior housing facilities, and convention centers. While there has been an uptick in defaults, it's a long way from the doomsday scenarios that made headlines early this year.

For one thing, the initial analysis of muni defaults was done at the height of Covid-19 shutdowns in March, say Bob DiMella and John Loffredo, co-heads and co-chief investment officers of MacKay Municipal Managers. Meanwhile, not every segment of the market has been squeezed. Public utilities have held up well, while public schools should benefit from continued strength in the housing market. Pension plans, meanwhile, have gotten a lift from the surging stock market.

Still, for many investors—especially those who buy and hold individual bonds—municipal bonds with an insurance wrapper may be worth a closer look.

“It’s a bond with a belt and suspenders,” DiMella says. “You’ve got the underlying credit, plus you’ve got this financial guarantor as a second backstop.”

### **Bond Insurance Makes a Comeback**

As the name suggests, bond insurance guarantees that principal and interest for a municipal bond will be paid in the event that the issuer defaults. Such insurance was widely used before the financial crisis, DiMella says, when a handful of companies insured roughly 60% of all new issues in the municipal bond market.

“It basically fell off a cliff after the crisis, with insurance wrappers representing a small percent of the market,” he says.

Insured municipal bonds had seen a slow resurgence over the last couple of years, but the Covid-19 pandemic has spurred new demand, with insured munis now representing about 10% of new muni bonds. More large and high-quality issuers are offering an insurance component on new bonds in order to quell investor angst about rating downgrades and defaults. Two companies, Assured Guaranty and Build America Mutual, insure most bonds today.

“Investors get the benefit of stable ratings, increased liquidity, and less volatility,” Loffredo says.

### **Small Price for Peace of Mind**

Insurance, of course, is never free. On average, investors will give up between 10 and 20 basis points (1/10th and 1/20th of a percentage point) of yield for muni bonds wrapped with insurance. While some investors will balk at this tradeoff, especially in a low-yield environment, buy-and-hold investors may find that it’s money well spent.

“You don’t have to sacrifice a lot of yield to get the benefit of stable cash flow,” says Loffredo, who

notes that high-net-worth clients and family offices have shown an increased interest in insured munis as of late.

### **Still Opportunity for Upside**

At the same time municipal bond insurance is an inexpensive option for investors who hold bonds to maturity, active investors may also have the potential for price appreciation.

“We would make the argument that there is a lot more value today than there was at the beginning of the year,” DiMella says. “In many cases they’re wider than they’ve been in many years.”

When the market first sold off this spring, virtually every segment of the muni market was impacted. Insured munis recovered faster than equivalent bonds, but spreads—the difference in muni yields versus comparable Treasuries—for triple-B-rated insured munis are still higher today than they were at the beginning of this year.

In fact, the spread for the insured index versus 10-year Treasuries began the year at 20 basis points and rapidly widened to 190 basis points during the market crisis this spring. They have since narrowed to 99 basis points, but the gap is still higher today than before the crisis, suggesting that yields should come down—and bond prices should move up.

### **Barron’s**

By Sarah Max

Dec. 1, 2020 12:13 pm ET

---

### **Premium Bonds As a Cushion for Rising Rates.**

**In the mid-1990s, the United States was emerging from a recession and facing unbalanced budgets, a transition of political party in the White House, and a slower-than-normal economic recovery in the wake of the Gulf War. (Sound familiar?)**

I recall discussing the situation and its financial implications with my then business partner as we commuted across the Golden Gate Bridge. More than two decades later, I have a strong sense of Deja-vu as we evaluate clients’ financial strategies in light of similar circumstances today.

As fixed income and muni market rates rise, the value of bonds go down. Municipal bond investors have a heightened awareness of the inverse relationship between interest rates and bond prices, but their knowledge of bonds, prices, yields and an extra dose of patience can be an advantage; they understand interest rates eventually will rise again.

For now, the Fed is planning to hold rates at near zero until labor markets reflect more maximized employment and inflation can reach 2% for some time. In this low interest rate environment, more bonds are being issued at premiums for sound reasons, and premium bonds can be used to help stabilize municipal bond values over time – if investors take time to understand them. When purchased correctly, premium bonds can work well in a portfolio and offer reasonable income solutions.

[Continue reading.](#)

## **Municipal VRDO Class Action Survives Banks' Request for Dismissal.**

**Financial institutions should work with outside counsel to ensure that their internal policies and external actions minimize conduct that may violate state and Federal laws and regulations, and incentivize employees to reward high ethical standards**

On November 2, the United States District Court for the Southern District of New York (SDNY) largely denied a motion to dismiss a class action lawsuit brought by the cities of Philadelphia and Baltimore (collectively, the Plaintiffs) in May 2019. The Plaintiffs brought the action on behalf of themselves as well as other municipal issuers of variable rate demand obligations (VRDOs) against several large banks (the Banks). Plaintiffs allege that beginning in April 2009 and continuing through November 2015 (the Class Period), these banks collectively forced state and local governments to pay inflated interest rates on the bonds and notes issued as VRDOs in derogation of the Sherman and Clayton Antitrust Acts, as well as various state laws. The Banks deny the allegations and claim that they are baseless.

Judge Jesse M. Furman ruled that the Federal antitrust claims, as well as some of the state law claims, could continue.

### **Background**

#### **Publicly-Financed Projects**

At issue in the lawsuit are the Banks' alleged improper remarketing practices in connection with bonds and notes issued by state and local governmental entities, as well as other public agencies and authorities. Issuers use these bonds/notes to finance projects including, but not limited to, economic development, education, hospitals, housing, transportation, and utilities.

#### **Public Support**

Certain VRDO bonds and notes are secured by tax revenues – generally, corporate and personal income taxes, sales taxes, and property taxes from individual and corporate taxpayers in the respective jurisdictions.[1] Other VRDOs are secured by revenues generated from a particular community project being financed. Some such examples include: (i) tenant rents for affordable housing, (ii) medical charges for hospitals, (iii) mortgage payments for single family housing, (iv) utility payments for electric, water, and sewer systems, (v) landing fees/passenger ticket charges for airports, (vi) tolls for bridges and highways, (vii) fares for mass transit, (viii) tuition for colleges and universities, (ix) property taxes for K-12 education, and (x) assorted local taxes and user fees for libraries, government buildings, police and fire stations, and parks.

To incentivize projects with a valuable community purpose, the Federal government provides a tax exemption on the bonds/notes to investors. For a project to qualify for the exemption, the Internal Revenue Code requires that for-profit companies have a limited role in these financed projects. Notably, unlike most other bond markets, there is an even split between corporate investors and

individual investors of municipal bonds/notes as individual investors benefit from the Federal (as well as state and local) tax-exemptions, are often utilized for an individual's retirement savings and, importantly, provides monies to build and maintain beneficial projects to the community at large.

## **VRDO Structure**

### *General*

VRDO bonds are issued on a long-term basis but have short-term interest rates that reset on a periodic basis, typically weekly. Accordingly, VRDOs are very attractive for governmental entities as they can borrow long-term at generally lower short-term rates. VRDOs also offer flexibility to investors, who can exit the investment on a weekly basis through a remarketing agent. Here, remarketing agents are required to remarket the bonds to other investors. Alternatively, if there are no investors willing to purchase the VRDOs, the bonds are 'put' back to a rated bank. Both the remarketing agent and the bank providing liquidity (the Liquidity Bank), which are typically the same or affiliated entities, charge fees for their services. These fees must be added to the favorable interest rates to obtain the true cost of the borrowings to the governmental entities.

### *Interest Rate Swaps*

Even though governmental entities (and their taxpayers) appreciate low interest rates, governmental entities generally are averse to variable rate risk, which can increase or decrease on a weekly basis. For this same reason, many homeowners do not like having adjustable rate mortgages, especially in a low fixed-rate environment. Accordingly, to assure that interest rates do not fluctuate, the Banks often provide parallel interest rate swaps so that the governmental entities take limited interest rate risk while the Banks take the variable rate risk.

However, there are numerous risks associated with swaps. These risks include, but are not limited to, basis risk, counterparty risk, and termination risk. Generally, governmental entities are not familiar with many of these risks. And these risks are often not fully explained by the Banks themselves. In general, in a falling interest rate environment (such as what has been occurring since the Great Recession, and exacerbated by the pandemic), interest rate swaps can be a significant drain on the resources of governmental entities. Additionally, conspiracies to manipulate interest rates (as allegedly occurred in this dispute) are the frequent subject of many of the cases cited by this court. Indeed, in resolving this motion, the court relied on several prior cases that involve Banks and other market participants manipulating interest rate swaps and other financial/commodity markets.[2]

Although the court discusses testimony from a Bank insider that VRDOs are a relatively low margin product for the Banks, interest rate swaps have historically been a very high margin product for banks offering swaps. Indeed, interest rate swaps have historically generated a significant percentage of large bank profits. For that very reason, such banks often encourage governmental entities to tie VRDOs to swaps. By this arrangement, the banks gain tremendous profits (and resultant banker bonuses), while the government reduces its perceived risks associated with VRDOs instead of undertaking a straight fixed rate bond deal or a VRDO with an interest rate cap.[3]

### *Remarketing Agent Role*

In most remarketing agreements, the banks have two primary obligations. First, they must reset the VRDOs weekly interest rate at the *lowest possible rate* that would permit the bond to trade at par. Second, as mentioned above, the banks must remarket the VRDOs to other investors at the *lowest possible rate* when existing investors decide to exit the investment. Remarketing agreements can also generally be terminated by the governmental entities at will. If, for example, a governmental

entity is not satisfied with a bank's remarketing efforts, then the governmental entity might want to replace the bank with another remarketing agent.

### *Liquidity Bank Role*

If the banks, as remarketing agents, are unable to find another investor, the Liquidity Banks are required to purchase the tendered, but unremarketed, bonds. This contractual obligation between the banks, as Liquidity Banks, and the governmental entities is typically called a letter of credit and reimbursement agreement. The interest rate for a tendered, un-remarketed, bond that is held by the Liquidity Bank typically ranges from 10-15%, a significant increase from the low current 1-3% interest rate on VRDO bonds. Notwithstanding this high rate, Liquidity Banks prefer not to hold un-remarketed bonds, as doing so typically indicates that the transaction has some sort of underlying issue.

Importantly, a bond with a drawn letter of credit would require that additional capital be set aside by the Liquidity Bank. In essence, this un-remarketed bond would then, generally, be characterized as a defaulted bond by the Liquidity Bank. Banks try to avoid this situation at all costs.

### *Market Disruptions*

Lehman Brothers' bankruptcy filing in September 2009 caused tremendous upheavals in the VRDO market. In 2008, \$116.3 billion of VRDO bonds were issued by municipal issuers.[4] In contrast, in 2009, \$32.3 billion of VRDO bonds were issued by these issuers, a decrease of 72%. [5] This general decreasing trend continued in each subsequent year of the Class Period. [6] One reason for these significant decreases was the failure of many banks to maintain satisfactory credit ratings. The decline in the banks' credit ratings forced governmental issuers to pay the un-remarketed bond rate of 10-15%, causing significant financial strains on government resources.

As these upheavals occurred in the midst of the housing crisis, Arent Fox was brought in to help develop the Temporary Credit and Liquidity Program (TCLP) with the US Department of Treasury, the Federal Housing Finance Agency, Fannie Mae and Freddie Mac, and state housing finance agencies throughout the country. This \$8 billion program replaced the Liquidity Banks' liquidity facilities with facilities jointly provided by Freddie Mac and Fannie Mae.

State and local housing finance agencies are tasked with supporting affordable housing. This task became difficult (if not impossible) due to, among other things, the parallel banking crisis, which required these housing finance agencies to devote their limited resources to pay much higher interest rates on their VRDO bonds rather than developing new affordable housing and supporting existing housing projects. This prompted the creation of TCLP, along with a program to facilitate the issuance of new bonds during this crisis period - the \$16 billion New Issue Bond Program (NIBP), which the Firm also helped develop and implement. Although the TCLP program was scheduled to terminate in 2012, it was extended through 2015, the end of the Class Period. The primary reason for an extension was that the Liquidity Banks were reluctant to provide liquidity during this tumultuous period for certain governmental issuers.

### **Alleged Antitrust Conspiracy**

As alleged in the Class Action Complaint, the Banks, which served as remarketing agents for approximately seventy-five percent of all VRDOs issued in the United States, conspired not to compete against each other.

Philadelphia and Baltimore claimed that the Banks shared information regarding proprietary

information, such as VRDO Bank inventory levels and planned changes to the VRDOs' base interest rates, in an effort to keep interest rates on VRDOs artificially high. According to the Complaint, collusion existed at all levels across each bank, ranging from senior personnel in Municipal Securities Groups, to the remarketing desks below these groups, down to sales desk personnel. [7]

As detailed in the Complaint, agents of the Banks communicated regularly, frequently, and in great detail. They often shared confidential and sensitive information relating to the VRDO issues. In some instances, the Banks are alleged to have shared the specific rates they were planning to set.

Ultimately, a related whistleblower complaint was filed, which led to the Securities Exchange Commission (SEC) opening a formal investigation in November 2015, and the Department of Justice (DOJ) starting its own investigation in 2016.

## **SDNY Rulings**

### **Antitrust Claims**

The bulk of the court's decision dealt with the Federal antitrust claims, which were ultimately upheld. The court stated that, during the Class Period, there was a plausible argument that the Banks "conspired *not* to compete against each other in the market for remarketing services." Needless to say, this type of alleged anticompetitive behavior is precisely the type of conduct contemplated and prohibited by the Clayton Act and the Sherman Act more than 100 years ago.

#### *Rate Manipulation*

In setting the initial rate, weekly rate resets, and the rate upon tender of VRDOs, the Banks are supposed to consider the individual characteristics of the bonds (*e.g.*, issuer financial strength, security, Liquidity Bank credit rating), market conditions and investor demand, rather than Bank inventory levels or profits.

Here, the court determined that by resetting the VRDO base rates on a regular and arbitrary basis, the Banks had coordinated the rate reset of a large number of VRDOs in violation of the Federal antitrust laws. In fact, Judge Furman found the Banks' conduct to be both "deceptively simple" and "effective," as the interest rates during the Class Period for VRDOs were alleged to be nearly seventy-five percent higher than the rates would have been absent the Banks' conduct. The court also determined that the coordination of interest rates ceased shortly after the SEC and DOJ investigations began. In the court's view, this timing indicated that the Banks had stopped coordinating their illicit rate-setting practices in direct response to the investigations.

#### *Collusive Activities*

Although pending investigations may not, standing alone, satisfy an antitrust plaintiff's pleading burden, the court held that government investigations may be used to bolster the plausibility of these claims and allegations of rate manipulation. Thus, the court concluded that there were enough facts in the complaint to survive the motion to dismiss.

The court also found that allegations of Bank misconduct constituted "plus factors" – circumstantial evidence demonstrating, by inference, the existence of a price-fixing conspiracy.[8] For example, the court found that the regular communications and exchange of information between the Banks demonstrated that they were able to (and did) coordinate their rates to ensure that none of the Banks broke ranks from the conspiracy. The court also ruled that each of the Banks had a motive to engage in the alleged scheme.

In addition, the court also determined that the Banks had used a third-party pricing service (J.J. Kenny Drake Inc.) until 2012 to telegraph to each of the Banks the collective view of where the base rate should settle for the Banks in remarketing bonds.[9]

Accordingly, the court held that Philadelphia and Baltimore had satisfied their burden, and ruled that the antitrust claims could continue against all defendants.

## **State Law Claims**

### *Breach of Contract*

Philadelphia and Baltimore also brought several breach of contract claims against the Banks based on Pennsylvania and Maryland state law. The court determined that several of the Banks had not entered into contracts with either city, served as their remarketing agents, or otherwise had any role at all in facilitating a contractual relationship with the cities. Accordingly, the court granted the motion to dismiss the breach of contract claims as to each of these “Non-Counterparty Banks.”

However, the court denied the motion to dismiss as to the remaining Banks that *had* entered valid remarketing agreements with the cities (the “Counterparty Banks”). The court held that Plaintiffs sufficiently pled that these “Counterparty Banks” *had* breached their contracts with Plaintiffs by failing to fulfill a contractual obligation under the remarketing agreements to use their *best efforts* – a high standard in the municipal bond market – to reset the interest rates of the VRDOs based on prevailing market conditions, and to remarket the bonds at the lowest rate possible that would allow the bonds to trade at par.

### *Breach of Fiduciary Duty*

Philadelphia and Baltimore also brought several breach of fiduciary duty claims against the Banks. However, as it had done with the Non-Counterparty Bank breach of contract claims, the court dismissed the fiduciary duty claims against the Non-Counterparty Banks, ruling that they had no fiduciary or confidential relationship with either of the Plaintiffs. The disposition of the remaining fiduciary duty claims varied based on the applicable state law.

### *Unjust Enrichment*

Finally, the Complaint also included claims for unjust enrichment against all of the Banks. The court reasoned that both Pennsylvania and Maryland law required the Plaintiffs alleging unjust enrichment to show that the validity of a contract itself is actually disputed. Here, the court noted that none of the Banks disputed the *validity* of the remarketing agreements. Rather, the dispute involved the *performance* stemming from the contracts. Accordingly, the court ruled that the unjust enrichment claims against the Counterparty Banks, which were duplicative of the breach of contract claims, must be dismissed.

The court also dismissed the unjust enrichment claims against the Non-Counterparty Banks, holding that both Plaintiffs failed to plausibly allege, as Pennsylvania and Maryland law requires, that these Banks had been enriched at their expense. Rather, as Judge Furman determined, neither Plaintiff had conferred a direct benefit to any Non-Counterparty Bank.

## **Statute of Limitations**

The applicable statute of limitations for the claims brought in this case ranged from two to six years. The statute of limitations is tolled in each relevant jurisdiction where allegations plausibly allege that the Banks concealed their misconduct, and the Plaintiffs’ ignorance of the concealed

misconduct was not a product of their own lack of reasonable diligence. Accordingly, the court held that the alleged misconduct was secret and covert by its very nature, and further ruled that a determination of the Plaintiffs' diligence in uncovering this conspiracy was premature at the pleadings stage.[10]

## **Takeaways**

Even though Plaintiffs' lawsuit, as well as the DOJ and SEC investigations, are ongoing, banks and other market participants can already draw certain key lessons from the case. Crucially, the case demonstrates that banks and other financial institutions are vulnerable to Federal antitrust claims based on their conduct in financial markets, especially where (as here) courts consider circumstantial 'plus' factors to infer the existence of price-fixing conspiracies.

## **Financial Institutions**

Accordingly, financial institutions should ensure that they have policies in place that prevent anticompetitive conduct similar to what is alleged to have occurred in this case.

In particular, financial institutions should be mindful of communications with other institutions that could imply horizontal conspiracies. Where necessary, financial institutions should retain outside counsel to develop policies and procedures to prevent or, at a minimum, immediately identify improper conduct *before* it develops into a bank-wide or industry-wide problem.

Additionally, all financial institutions, and particularly those that deal with bonds, swaps and other financial instruments, should be cognizant of the ability of municipalities and corporate borrowers to sue them for contractual breaches where there are plausible breaches of the underlying financing agreements. Here, too, financial institutions should work with outside counsel to ensure that their internal policies and external actions minimize conduct that may violate state and Federal laws and regulations, and incentivize employees to reward high ethical standards.

## **Governmental Entities and Conduit Borrowers**

In addition, as always necessary, governmental entities, as well as conduit borrowers (including corporations and, in particular, not-for-profit corporations), should retain sophisticated, experienced and independent counsel and financial advisors to assure an independent review of VRDOs and the associated derivatives instruments so as to avoid repeating the turmoil impacting these instruments during the Great Recession. This is crucial for all financings, and not just VRDOs.

We can always hope...

[1] Due to the COVID-19 pandemic and resultant economic dislocations, general sales and selective sales taxes have likely been most affected, severely straining the financial wherewithal of municipal issuers. The impact will likely not be completely apparent until the end of such governmental entities' fiscal years (typically June 30th). The ten (10) most affected states, in order of highest percentage of tax revenues from these taxes (ranging from 61.7% to 85.1%), are:

1. Texas 6. Tennessee
2. South Dakota 7. Mississippi
3. Florida 8. Indiana
4. Nevada 9. Ohio
5. Washington State 10. Hawaii

In addition, due to disruptions in the oil and gas industry as a result of the pandemic, related

severance taxes may also be adversely impacted. The states with significant severance taxes, in order of priority highest percentage of tax revenues from these taxes (ranging from 31.7% to 52.5%), are:

1. North Dakota 2. Alaska 3. Wyoming

Source: "Share of tax revenue in the United States by source FY 2019, by state," Statista (June 2020).

[2] In deciding the Banks' motion to dismiss, the court relied on several recent SDNY cases involving interest rates swaps. *See Gelboim v. Bank of Am. Corp., In re Interest Rate Swaps Antitrust Litig.*, 823 F.3d 759 (2d Cir. 2016) (finding that an inter-bank conspiracy was plausibly alleged); *Sonterra Capital Master Fund Ltd. v. Barclays Bank PLC*, 366 F. Supp. 3d 516 (S.D.N.Y. 2018) (denying a motion to dismiss where defendants allegedly colluded to share information, coordinate rate submissions, and engaged in manipulative trading practices); *Alaska Electr. Pension Fund v. Bank of Am. Corp.*, 175 F. Supp. 3d 44 (S.D.N.Y. 2016) (relating to manipulation of ISDAfix, a rate recently confirmed with the Federal Reserve Board of St. Louis (FRED), that as best as it can tell, is derived from LIBOR); and *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 27 F. Supp. 3d 447 (S.D.N.Y. 2014) (dismissing unjust enrichment claims against non-counterparty defendants).

In addition, the court also relied on a separate line of SDNY cases involving other types of market manipulations. *See In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 74 F. Supp. 3d 581 (S.D.N.Y. 2015) (holding that consolidated complaint adequately established antitrust injury); *In re Commodity Exchange, Inc., Gold Futures & Options Trading Litigation*, 328 F. Supp. 3d 217 (S.D.N.Y. 2018) (holding that class failed to state antitrust conspiracy claim); *In re GSE Bonds Antitrust Litig.*, 396 F. Supp. 3d 354 (S.D.N.Y. 2019) (holding that alleged price-fixing conspiracy was inherently self-concealing so as to constitute fraudulent concealment); and *In re Platinum & Palladium Antitrust Litig.*, No. 1:14-CV-9391 (GHW), 2017 WL 1169626 (S.D.N.Y. Mar. 28, 2017) (finding a conspiracy plausibly alleged).

[3] In contrast to a swap which has no up-front cost (though potential substantial costs over time), an interest rate cap has an up-front cost (though with no costs over time) but is often limited to a period shorter than the tenor of the underlying bonds. In deciding between a swap and a cap, the governmental entity will often decide to go with the 'free' product (i.e., a swap). It should be emphasized that most banks do not even volunteer a cap option due to its limited profit potential for the bank (and the banker).

[4] The Bond Buyer.

[5] *Id.*

[6] *Id.*

[7] Parallel allegations against banks and other institutions were made in the SDNY cases referenced by the court in Footnote 2 above.

[8] *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

[9] This is consistent with many of the SDNY cases referenced in Footnote 2 above.

[10] Here, the court also ruled that, at the pleading stage, discovery would be appropriate for the parties to develop their claims and defenses. *See In re Issuer Plaintiff Initial Pub. Offering Antitrust Litig.*, No. 00-CV-7804 (LMM), 2004 WL 487222, at \*4 (S.D.N.Y. Mar. 12, 2004) (denying motion to dismiss where relevant statute of limitations had been tolled due to alleged covert rate-fixing

conspiracy).

## **Arent Fox**

December 3, 2020

---

### **Opportunity Zones: Past, Present, and Future, with Rachel Reilly.**

With a new President taking office next month, what does the future hold for Opportunity Zones? And what policy reforms under a Biden-Harris administration would improve the policy such that it more closely adheres to legislative intent?

Rachel Reilly is former director of impact strategy at Economic Innovation Group, a bipartisan public policy organization that helped to create the Opportunity Zone legislation.

[Continue reading.](#)

## **Opportunity Db**

By Jimmy Atkinson

December 2, 2020

---

### **Illinois Plans to Borrow Another \$2 Billion From Federal Reserve.**

- **It comes after state already borrowed \$1.2 billion from Fed**
- **Fed's municipal lending program is set to end Dec. 31**

Illinois plans to borrow an additional \$2 billion from the Federal Reserve in an effort to prop up its already-struggling finances as the state's bills rise amid the pandemic

It would be the second time the worst-rated state has borrowed through the central bank's Municipal Liquidity Facility, an emergency lending program for state and local government issuers. Illinois already borrowed \$1.2 billion from the Fed during fiscal year 2020 to cover pandemic-induced losses, and has since repaid \$200 million of that loan, according to the governor's office.

"Short-term borrowing is a short term band-aid to address the urgency of a short-term problem like one caused by a pandemic," Governor J.B. Pritzker said during a virtual press conference on Wednesday.

Illinois is the only state to tap the Fed's borrowing program so far and is at risk of seeing its debt cut to junk. The pandemic worsened Illinois's already strained finances: the state is struggling with \$137 billion of pension debt and \$7 billion of unpaid bills. Illinois is projecting a fiscal 2021 budget gap of about \$3.9 billion and deficits are expected to continue through 2026, according to a Nov. 13 forecast from the Governor's Office of Management and Budget.

## **Yield Penalty**

Investors have long punished Illinois for its fiscal woes, boosting the penalty the state pays to borrow from the bond market. Illinois 10-year general obligation bonds yield about 2.77 percentage points more than benchmark debt, the highest of the 20 states tracked by Bloomberg.

The state still has market access, but it's not a surprise that officials are turning to the Fed, said Daniel Solender, head of municipal securities at Lord Abbett & Co., which manages \$30 billion of state and local debt, including Illinois bonds.

"It makes sense to use it while they can," said Solender. "The reason they're using the facility is because the cost for them in the market, it's higher for them than other states."

## **Spending Cuts**

The decision comes after Illinois voters rejected a ballot measure that would have let the state raise taxes on its wealthiest residents, a key component of Pritzker's plan to balance the budget. Since the failure of the graduated income tax proposal, Pritzker, a billionaire Democrat, has warned of potential spending cuts for public safety, education and health services.

Pritzker said the new borrowing is less than half of the \$5 billion authorized, and that it would be "irresponsible" to saddle the state with the full amount. He said the state plans to repay the debt "as early as possible."

"The \$2 billion is necessary given that this targeted borrowing will allow us to stabilize Illinois' health care system in the middle of a global pandemic and a COVID-19 spike here in Illinois," Illinois Comptroller Susana Mendoza said in an emailed statement.

Mendoza plans to use the loan to pay medical bills for which the state receives federal matching dollars and also to avoid late-payment interest penalties, she said. The borrowing will be repaid over a three-year period and any new federal stimulus will be earmarked to repay the loan, according to Mendoza.

Dec. 1 is the last day for state and local governments to notify the Fed of their intent to tap the program before it expires on Dec. 31.

## **Bloomberg Markets**

By Nic Querolo and Shruti Singh

November 25, 2020, 2:56 PM PST

---

## **[Pittsburgh Sports Authority Bond Rating Slashed by S&P.](#)**

The municipal authority that owns Pittsburgh's pro football, baseball and hockey stadiums had its ratings cut down two notches, from A-plus to A-minus, by S&P Ratings to reflect "a steep drop in pledged hotel tax revenue, a direct result of the severe toll of the pandemic," the agency stated in its [ratings note](#).

The Pittsburgh & Allegheny Sports & Exhibition Authority owns the Steelers' Heinz Field, the Pirates' PNC Park and the Penguins' PPG Paints Arena, as well as the city's convention center and some infrastructure, such as parking garages and roads near sports facilities. As part of building and

maintaining those properties, the sports authority has \$585 million in municipal bond debt outstanding. The A rating is the bottom of three “strong” credit ratings S&P Ratings maintains. The A rating, like most other S&P scores, can be further rated a “plus,” “minus” or standalone. “We anticipate either cash on hand or debt service reserve may need to be tapped to meet debt service due in February 2021, unless there is further revenue growth in the coming months,” the agency wrote.

Pledged revenues supporting the sports authority’s bonds were down 59% year to date through September, to about \$11.3 million, according to S&P. Based on earlier disclosures by the authority, revenue was on par with prior years in the first quarter of the year, then plunged starting in April. The bonds are initially backed by two hotel taxes of 5% and 2% on room transactions. With annual debt service of \$54 million on the sports authority bonds, Pittsburgh will fall well short of what’s needed.

Yet according to a September report from the Allegheny Institute for Public Policy, while the sports stadiums are technically revenue-backed bonds that would default if tax revenue continues to drop, a series of side agreements with Pennsylvania means the pro teams’ home arenas will continue to have their debt paid on time. For PPG Paints Arena, the state signed a 2014 deal to pay the rink’s debt service if other revenues fall short. Similarly, any unmet balance in the football and baseball stadium payments gets covered by the state annually through another side deal. The net effect is that while other tax revenue-supported facilities in Pittsburgh have had budget cuts due to lower revenue, the sports facilities haven’t. “So, while parks, libraries, the zoo, the aviary and numerous other organizations took cuts, the [sports] debt allocation was unchanged,” economist Eric Montarti wrote in the Allegheny Institute analysis.

The bond rating’s downgrade doesn’t have an immediate effect on the Pittsburgh sports authority itself. A drop in the credit rating means those people owning the existing bonds will experience a drop in value. The sports authority would likely be affected by higher borrowing costs in the future, however. A 2017 study found that every notch of ratings downgrade cost issuers an average of six basis points (100 basis points equals one percentage point). A 12-basis-point shift would mean Pittsburgh paying \$120,000 more in interest on a \$100 million A-minus bond than it would pay on one rated A-plus.

## **Yahoo Sports**

by Brendan Coffey

November 24, 2020

---

## **[MSRB EMMA 529 & ABLE Tutorial.](#)**

Want some step-by-step training on how to submit continuing disclosures to the EMMA® website for 529 savings plans and ABLE programs?

[Watch the MSRB’s 12-minute tutorial →](#)

---

## **Governmental Accounting, Auditing, and Financial Reporting 2020 Edition.**

GFOA has published Governmental Accounting, Auditing, and Financial Reporting (GAAFR or “Blue Book”) for the past 85 years with hundreds of thousands of copies sold. This edition has been updated to incorporate all of the guidance of the GASB through GASB Statement No. 91, as well as GFOA’s current best practices on accounting, auditing, and financial reporting.

[Purchase.](#)

---

## **Financial Reporting Model Improvements: GASB Webinar**

**December 15, 2020 | 2:00-4:00 p.m. EST**

[More Information](#)

---

## **“Bonding Time” Podcast with the President of DPC Data, Ken Hoffman.**

BDA podcast with the President of DPC Data, Ken Hoffman

- History of DPC Data
- Obligor Mapping Tool
- Variety of Services / Products for Muni Bond Dealers

[Listen to Podcast.](#)

## **Bond Dealers of America**

December 3, 2020

---

- **Ed. Note:** We’ll be off next week. Double dose o’ drivel 12/8.
- [Regulator Joint Statement Highlights Need to Move on from LIBOR \(But For Some, Not Necessarily to SOFR\) – McGuireWoods](#)
- [The Transition Out of LIBOR: What State and Local Governments Should be Discussing with Their Financing Teams](#)
- [IRS PLR: City’s Geographic Boundaries Constitute Qualified Service Area](#)
- [Treasury Releases Priority Guidance Plan.](#)
- [S&P: Approval Of Nontraditional Revenues Dominates Recent Ballot Measures For U.S. State And Local Governments.](#)
- [S&P: The Post-Election Landscape For U.S. Public Finance](#)
- [Without Fed’s MLF, Stakeholders Warn of a Fragile Future for Munis.](#)
- [Ethical Considerations in a Digital World: Live NABL Webinar – \(Whee! CLE!\)](#)

And finally, Great Moments in Judicial Rhetoric is brought to us this week by *Faulkner v. Crumbley*. Imagine this: you’ve worked your way through college; LSATs; law school; clerkships; Big Law; dickhead partners (you know who you are); appointment to the Superior Court; and

finally a gig on the Court of Appeals of Georgia; only to find yourself writing this piece of soaring legal rhetoric, “the Crumbleys presented testimony evidence that three cows, not just one, were on the road the night of the accident...” It was a dark and bovine night.

---

## **SCHOOL IMPACT FEES - CALIFORNIA**

### **[AMCAL Chico LLC v. Chico Unified School District](#)**

**Court of Appeal, Third District, California - November 5, 2020 - Cal.Rptr.3d - 2020 WL 6498638 - 20 Cal. Daily Op. Serv. 11,591 - 2020 Daily Journal D.A.R. 12,009**

Developer of private dormitory for students at state university within school district boundaries brought action for refund of school impact fees imposed by school district.

The Superior Court granted school district’s motion for summary judgment, and developer appealed.

The Court of Appeal held that district was not required to determine whether dormitory would generate new students for school district in order to justify fee.

School district was not required to determine whether private residential dormitory for state university students would generate new students for school district in order to justify imposition of school impact fee based on study analyzing all new residential construction.

A school district need not make an individualized determination for each particular development project before imposing school impact fee; instead, the school district must make findings based on the general type of construction, such as residential construction.

School impact fee imposed on new private residential dormitory for state university students, which was based on general study of new residential development and impact on school facilities, was reasonable and complied with the Mitigation Fee Act, and thus was not an invalid special tax.

School impact fee imposed on new private residential dormitory for state university students was not a taking without payment of just compensation, as fee complied with the Mitigation Fee Act.

Developer fees generally do not constitute a taking if the fee is reasonably related to the impacts of the type of new residential development on the school district’s school facilities and meet the requirements of the Mitigation Fee Act.

---

## **PREEMPTION - GEORGIA**

### **[Faulkner v. Crumbley](#)**

**Court of Appeals of Georgia - November 2, 2020 - S.E.2d - 2020 WL 6389973**

Driver and her passenger, who were injured when their vehicle struck a cow standing in the roadway, brought negligence action against cow’s owners. The Superior Court denied cow owners’ motion for summary judgment, and they appealed.

The Court of Appeals held that:

- Summary judgment evidence that there were three stray cows on roadway, rather than just one, without more, did not create genuine issue of fact that cow’s owners breached their duty to keep

- their livestock off the road, and
- State statute, providing that no owner shall permit livestock to run at large on or to stray upon the public roads of the state or any property not belonging to owner of the livestock, except by permission of owner of such property, preempted county ordinance.
- 

## **EMINENT DOMAIN - NEBRASKA**

### **Douglas County School District No. 10 v. Tribedo, LLC**

**Supreme Court of Nebraska - November 6, 2020 - N.W.2d - 307 Neb. 716 - 2020 WL 6533474**

Landowner sought review of board of appraisers' award of \$2.6 million for school district's condemnation of approximately 43 acres of landowner's 74-acre tract, which landowner planned to develop into a mixed-use development, for a new high school site.

The District Court entered judgment upon jury verdict awarding landowner \$4.6 million in just compensation. School district appealed.

The Supreme Court held that:

- Trial court acted within its discretion in admitting expert testimony regarding diminution of market value to remaining property;
- Any error in trial court's refusal to give proposed jury instruction relating to remaining property did not prejudice school district;
- Sufficient evidence supported jury's \$4.6 million award; and
- Trial court acted within its discretion in awarding landowner \$591,000 in attorney fees.

Trial court acted within its discretion in admitting expert testimony of developer's real estate appraisers regarding diminution of market value to developer's remaining property following the taking of portion of its 74-acre tract for new high school site, where experts detailed numerous elements that influenced their valuations, including dirt fill and leveling costs, and both appraisers testified that their references to damages related to a reduction in fair market value.

Any error in trial court's refusal to give condemnor's proposed jury instruction relating to remaining property following the taking, which stated that the "costs to cure" could be considered only if they had an impact on fair market of remaining property, did not prejudice condemnor, even though instruction was a correct statement of law, where substance of proposed instruction was consistent with instructions the court gave on measure of damages to remaining property.

Sufficient evidence supported jury's total award of \$4,625,967 as compensation for both the taken property and diminution to fair market value of the remainder, for the condemnation of approximately 43 acres of a 74-acre tract that condemnee planned to develop into a mixed-use development instead of new high school site that was the reason for the taking, where condemnee's first real estate appraiser valued total compensation at \$5,890,000, condemnee's second appraiser valued total damages at \$7,022,000, and condemnor's real estate appraiser valued total damages at \$2,601,600.

Trial court acted within its discretion in awarding condemnee \$590,924.89 in attorney fees in condemnation proceeding resulting in judgment of \$4,625,967 for condemnee, where condemnee offered affidavits of three members of State Bar who testified that they reviewed fees charged by condemnee's attorneys, that they received a detailed summary of work provided by counsel, and that

they found requested fees to be reasonable, and court provided detailed explanation for fee award, including an acknowledgment that judgment exceeded condemnation award by more than 75%, that judgment was believed to be one of largest jury awards in a condemnation matter in a reported decision in state, that litigation was fairly complex, and that litigation persisted for over two and one-half years.

---

## **INCORPORATION - SOUTH DAKOTA**

### **[State through Attorney General v. Buffalo Chip](#)**

**Supreme Court of South Dakota - November 10, 2020 - N.W.2d - 2020 WL 6601926 - 2020 S.D. 63**

State filed a petition for, or in the nature of, a writ of quo warranto seeking a judgment declaring that campground did not lawfully incorporate as a municipality, after the Supreme Court concluded that county residents and neighboring city lacked standing to challenge the incorporation.

The Circuit Court granted State's motion for summary judgment. Campground appealed.

The Supreme Court held that:

- As a matter of first impression, statute that barred suits seeking to annul the existence of an actually incorporated municipality did not apply;
- State was not barred by doctrines of laches, estoppel, and waiver from bringing petition; and
- A municipality is prohibited from incorporating if it contains less than 100 residents or if it contains less than 30 voters.

Statute that barred suits seeking to annul the existence of a municipality that had actually incorporated did not apply to State's petition for writ of quo warranto that sought judgment declaring that campground did not lawfully incorporate as a municipality; State did not allege that campground abused its powers or surrendered its charter as legally existing corporation, but rather State sought to prevent campground from further acting as municipal corporation because it did not lawfully incorporate in the first instance.

State was not barred by doctrines of laches, estoppel, and waiver from bringing petition for writ of quo warranto that sought judgment declaring that campground did not lawfully incorporate as a municipality, despite contention that State would have known from census that campground did not have requisite 100 residents when it sought to incorporate and State should have challenged its existence then; no statute required State to institute action prior to a municipality's purported incorporation, and Secretary of State's filing of certified copy of canvas of votes in favor of incorporation was ministerial act that could not operate as waiver.

A municipality is prohibited from incorporating if it contains less than 100 residents or if it contains less than 30 voters; under either scenario, a municipality is not allowed to incorporate.

---

## **EMINENT DOMAIN - UTAH**

### **[Salt Lake City Corporation v. Kunz](#)**

**Court of Appeals of Utah - October 16, 2020 - P.3d - 2020 WL 6106942 - 2020 UT App 139**

City initiated action against owners of land south of airport acquired by city to obtain aviation easement by condemnation over airspace south of airport runway.

The Third District Court dismissed condemnation action. City appealed and owners cross-appealed.

The Court of Appeals held that:

- Owners' admissions at hearing on motion for partial summary judgment were limited in applicability to then-pending motions before trial court;
- Ruling on partial summary judgment motion did not rule on issue of whether city complied with notice and disclosure requirements;
- Notice to owners of eminent domain proceedings was inadequate to initiate condemnation for aviation easement;
- Actual notice and previous opportunities to be heard did not amount to compliance with notice and disclosure requirements;
- Owners were not required to show prejudice with respect to violation of notice statute; and
- Trial court did not err by not allowing city to amend complaint.

Land owners' admissions in May 2009 hearing on motion for partial summary judgment, on issue of city's authority to condemn air rights over owners' land, that certain facts were "undisputed for the purposes of the current motions" were limited in their applicability to the then-pending motions before the district court, and thus trial court did not err in failing to consider ruling when dismissing city's condemnation complaint for failing to follow notice and disclosure requirements, where admissions came in response only to issue of extraterritorial eminent domain power, owners never withdrew immediate occupancy deposit including defense that city had not followed notice procedures, and city propounded discovery request for documents related to that defense.

Language in prior ruling for partial summary judgment on issue of city's extraterritorial eminent domain power in action to obtain aviation easement over airspace south of airport, that one of undisputed issues was that owners "were provided with timely and proper notice regarding condemnation efforts" did not amount to ruling on issue of whether city gave land owners proper notice and disclosure required by statute, and thus reconsideration of issue was unnecessary on appeal; partial summary judgment ruling merely identified that notice issue was not in dispute as it related to city's extraterritorial eminent domain power.

Notice to land owners of eminent domain proceedings regarding airspace over land they owned south of airport did not adhere to statute's directive regarding timing of that notice, and thus was inadequate to initiate condemnation for aviation easement, although notice for first meeting complied with statutory requirements, where owners were allowed to speak at second meeting but were not sent written notice of meeting at least ten business days in advance, and notice for third meeting arrived only three business days before meeting and owners were not allowed opportunity to be heard.

Statute governing notice requirements for condemnation proceedings required strict compliance, and thus actual notice to land owners of eminent domain proceedings regarding air rights over land they owned south of city's airport, and previous opportunities to be heard on issue did not fulfill purposes of statute to provide abundant procedural fairness to property owners.

Trial court did not err by not allowing city to amend complaint to obtain aviation easement over airspace south of airport through condemnation; city failed to adequately explain why amendment should be granted, failed to provide proposed amended complaint for consideration, and amendment would be futile since city could not retroactively follow statutory preconditions for condemning

private property rights.

---

## **HIGHWAYS - VERMONT**

### **[In re Diverging Diamond Interchange Act 250](#)**

**Supreme Court of Vermont - November 6, 2020 - A.3d - 2020 WL 6534557 - 2020 VT 98**

Objector sought review of Environmental Commission's decision granting Agency of Transportation's application for an Act 250 land use or development permit for highway project involving reconfiguration of interstate exit, citing concerns of phosphorus and chloride discharges into impaired lake.

The Superior Court, Environmental Division, granted permit and entered a postjudgment motion clarifying its decision. Objector appealed.

The Supreme Court held that:

- Environmental Division did not apply an improper de minimis standard in determining whether project would cause undue water pollution;
- Mere possibility of additional mitigation measures, without more, did not require a finding that phosphorus discharge was undue pollution;
- Environmental Division did not improperly afford Agency a presumption of compliance with criterion of no undue pollution;
- Environmental Division did not improperly shift burden of proof to objector with respect to issue of chloride pollution;
- Finding that project would not cause undue chloride pollution was not clearly erroneous; and
- Environmental Division acted within its discretion in not joining town as a necessary co-applicant.

Environmental Division did not apply an improper de minimis standard in determining whether proposed project would cause undue water pollution precluding grant of an Act 250 land use or development permit sought by Agency of Transportation for highway project involving reconfiguration of interstate exit, even if Division characterized amount of phosphorus discharged by project into impaired lake as exceedingly small, where Division considered testimony from both parties' experts regarding amount of phosphorus discharges, Division agreed with objector that there was no automatic allowance for de minimis water pollution, and Division also weighed project's compliance with applicable regulations, ability of floodplains to retain phosphorus, and available mitigation measures.

Mere possibility of additional mitigation measures, without more, did not require a finding that water pollution from phosphorus discharges into impaired lake was undue water pollution that would preclude grant of an Act 250 land use or development permit sought by Agency of Transportation for highway project involving reconfiguration of interstate exit, where Agency provided evidence of a carefully designed stormwater treatment system that used grass channels to remove phosphorus, and objector's expert testified that additional mitigation measures were available but could not quantify the expected reduction in phosphorus load or offer an opinion as to effect of reductions.

Environmental Division did not improperly afford Agency of Transportation a presumption of compliance with criterion of no undue water pollution for granting an Act 250 land use or development permit based on existence of stormwater permit for highway project involving

reconfiguration of interstate exit; stormwater permit vested in regulations that did not include specific standards for phosphorus or chloride discharges, Division was concerned about strength of a presumption arising out of project's circumstance because phosphorus or chloride discharges were at issue, and Division expressly evaluated each pollutant on the merits rather than relying upon a presumption.

Environmental Division did not improperly shift burden of proof to objector with respect to issue of undue chloride pollution from proposed highway project involving reconfiguration of interstate exit, in determining whether grant Agency of Transportation's application for an Act 250 land use or development permit, where Division considered all evidence presented by Agency, including statewide snow and ice control plan, project's chloride management plan, and extensive expert testimony, Division concluded that Agency satisfied its burden based on that evidence, and Division then considered objector's evidence and concluded that it was insufficient to disturb that conclusion.

Environmental Division did not clearly err in finding that proposed project would not cause undue chloride pollution that would preclude grant of an Act 250 land use or development permit sought by Agency of Transportation for highway project involving reconfiguration of interstate exit, even though Division did not have evidence before it about chloride use by town that was responsible for maintaining portion of project, where Agency witness testified that town's plan was reasonable and accorded with Agency's statewide snow and ice control plan, Agency had agreement with town detailing town's responsibility for winter road maintenance, and order granting permit provided that project was required to abide by conditions imposed by District Commission including chloride management plan.

Environmental Division acted within its discretion in not joining town as necessary co-applicant on appeal of Environmental Commission's grant of Agency of Transportation's application for an Act 250 land use or development permit for highway project involving reconfiguration of interstate exit, where Agency effectively controlled land such that appropriate permit conditions could be imposed on project, project's chloride management plan accorded with Agency's snow and ice control plan and also incorporated town's snow and ice plan by reference, Agency's expert testified that town's plan was reasonable, permit required Agency to perform winter road management in accordance with chloride management plan, and Agency's agreement with town required town to abide by chloride management plan.

---

## **PUBLIC PENSIONS - WASHINGTON**

### **[Wilson v. Washington State Department of Retirement Systems](#)**

**Court of Appeals of Washington, Division 1 - November 2, 2020 - P.3d - 2020 WL 6389986**

Retired city police officer sought judicial review of Department of Retirement Systems decision to deny him retirement benefits because, after leaving the police force, he took a new job as chief of staff for the city mayor.

The Superior Court reversed, and Department appealed.

The Court of Appeals held that:

- Retired officer could assert equitable estoppel as a defense;
- Department was equitably estopped from denying retired city police officer his pension benefits;
- and

- Officer was entitled to attorney's fees under the Equal Access to Justice Act (EAJA).

Retired city police officer could assert equitable estoppel as a defense to Department of Retirement System's defense of not paying him his pension because of his alleged breach in taking job as chief of staff for mayor; retired officer was due his pension and had, in essence, a contractual right to his pension benefits, and to contest the Department's denial of his pension, his only remedy was to appeal the decision.

Department of Retirement Systems was equitably estopped from denying retired city police officer his pension benefits on grounds he accepted job as city mayor's chief of staff; Department publications uniformly explained that an employee could return to work in the public sector and maintain their benefits by opting out of any other retirement program, city called and confirmed that information before hiring officer, officer relied on that information by resigning his law enforcement commission, terminating his employment as chief of police, and filling out the Department's form for returning to work, and retroactive application of Department's new requirement that a retiree have no reasonable expectation of continuing employment with the employer at the time of separation would be manifestly unjust to retired officer.

Department of Retirement System's application of its new interpretation of "separated from service," which provided that, to obtain pension benefits, a retiree have no reasonable expectation of continuing employment with the employer at the time of separation, to retired city police officer who took job as city mayor's chief of staff was not substantially justified, and thus officer was entitled to attorney's fees under the Equal Access to Justice Act (EAJA); Department's website, publications, training, and oral representations confirmed the department's historical interpretation of "separation of service" before officer retired, and there was no notice of any change of interpretation before it was applied to officer.

---

## **TAX - NEW YORK**

### **[Wells Fargo Bank, N.A. as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC2 Asset- Backed Pass-Through Certificates v. Budram](#)**

**Supreme Court, Appellate Division, Third Department, New York - November 5, 2020 - N.Y.S.3d - 2020 WL 6493824 - 2020 N.Y. Slip Op. 06323**

In action by mortgagee to enforce its mortgage after taxpayer-mortgagors reacquired property from city following tax foreclosure sale, the Supreme Court entered order dismissing complaint and, upon reargument, adhered to its prior decision dismissing complaint.

The Supreme Court, Appellate Division, held that any transfer of real property from city back to taxpayers, after the city had acquired a fee simple interest therein by a deed issued following tax foreclosure sale, could not be considered a redemption of the property or a rescission of the tax foreclosure, and did not restore mortgage lien.

Any transfer of real property from city back to taxpayers, after the city had acquired a fee simple interest therein by a deed issued following tax foreclosure sale, could not be considered a redemption of the property or a rescission of the tax foreclosure, and did not have effect of restoring mortgage lien which had been extinguished upon city's acquisition of fee simple interest in property by the issuance of deed following expiration of taxpayer-mortgagors' right of redemption; mortgagee, having made no attempt to protect its mortgage interest in tax foreclosure proceeding, could not attempt to enforce its mortgage once taxpayer-mortgagors reacquired the property from city.

---

## **S&P: Approval Of Nontraditional Revenues Dominates Recent Ballot Measures For U.S. State And Local Governments.**

### **Key Takeaways**

- Legalization of gaming and drugs continued to expand, with seven states approving new or additional taxing power from nontraditional revenue sources.
- Results from income tax increases were mixed, with the three major initiatives resulting in three different outcomes.
- Only two states had bond referendums on the ballot this year, but they all passed.
- Highlights from local government elections include some changes in property tax exemptions and police reforms in light of recent demonstrations across the country.

Voters weighed in on statewide ballot measures in 22 states on Nov. 3. Many of these were approved, with a clear preference for increasing “sin tax” revenues from gaming and legalized drugs. At S&P Global Ratings, our primary focus on ballot results is how credit quality could be affected; this generally stems from revenue increases and decreases, or a notable rise in expenditures. As more states turn to nontraditional revenue sources to support operations, we are also watching the long-term trend and stability of the new revenues.



### **Widespread Support Of Nontraditional Revenue Sources Including Gaming/Sports Betting, Marijuana**

In recent years, various states have looked to legalization-and subsequently taxation-of retail marijuana. This seemed to continue with overwhelming support from voters, as all such measures on the ballots across the country passed. Arizona, Montana, New Jersey, and South Dakota approved the legalization of recreational marijuana, while voters in Mississippi and South Dakota approved medical marijuana programs. Colorado legalized marijuana some years ago, but this November asked voters for an increase in the nicotine tax, and Oregon increased taxes on tobacco products. We expect that more states will pass measures like this but expect their overall effect on state finances to be marginal. Additionally, as more states legislate these kinds of revenues, we expect that as legalization of marijuana becomes more widespread, the growth of revenues from these taxes will slow over time as marijuana becomes more readily accessible. (See our report, “Is Marijuana Legalization The Answer To States’ Budget Pressures?,” published Feb. 21. 2019, on RatingsDirect)

Measures to expand gaming and betting also received support, with Nebraska approving three measures including enacting taxes on racetrack activities. Maryland and South Dakota also expanded gaming activities within the states. While not a statewide measure, Louisiana’s voters approved sports betting in a majority of its parishes. All states that permit commercial casino gaming levy some form of wagering tax on adjusted gross receipts or gross gaming receipts less any payout for prizes.

Although none of these nontraditional sources make up significant components of a state’s revenue, we do view the diversity of revenue sources as a net positive.

### **Mixed Results For Income Tax Changes**

Three states had income tax changes on the ballot (Arizona, Colorado, and Illinois). While a voter initiative to reduce income tax rates passed in Colorado (to 4.55% from 4.63%), in Arizona voters

approved an initiative to increase income tax on residents with incomes above \$250,000. The measure sets up a separate tax bracket for residents that would increase the top rate to 8% from 4.5% on incomes above \$250,000 (or \$500,000 for joint filers). The additional revenue derived from the increased tax rate will be used solely to fund education.

Additional revenues at the state level can bode well for state revenue sharing for schools and local governments, and results for state-level tax increases varied. When revenue increases at the state level either enhance—or stave off cuts—to locals, the credit impact can be net positive.

Illinois voters did not approve a legislative measure to replace the state's flat income tax rate with a graduated income tax, which would have been significant in addressing the state's current budget challenges. (For additional information, see our summary report for Illinois published Oct. 7, 2020.) Limited support for increased income taxes is not surprising, particularly during an economic contraction. However, if this trend continues, states will have to look to other options to balance budgets as the effects of the COVID-19 pandemic on state revenues contribute to varying degrees of budget and liquidity stress across states.

There is no immediate credit impact for local governments in Arizona, Illinois, or Colorado as a result of the electorates' vote on income tax, but we are watching how it could affect local operations over the long term.

### **Few Requests For State Bond Issuances During A Tepid Economic Recovery**

Two states, California and New Mexico, included new bond authorization questions this year, unlike in 2018 when six states had bond authorizations on the ballot. New Mexico was successful, as was California. Such authorizations can provide funding for various programs, taking advantage of favorable market conditions. In our view the decline of bond authorization measures could reflect the uncertainty of the recovery from the recent COVID-19 induced recession. S&P Global Ratings has noted that in the decade following the Great Recession state governments generally reduced their overall debt burden. (See "Infrastructure After COVID-19: Risk Of Another Lost Decade Of U.S. State Government Capital Investment," Oct. 2, 2020.)

### **Local Government: Some Shifts In Who Bears The Property Tax Burden**

Across the U.S., voters approved multiple statewide measures that resonate down to the local government level. This includes some indication of an incremental shift in property taxpayers from residents to business, such as more homestead exemptions for segments of society such as veterans and senior citizens. Measures supporting these changes passed in Florida, Virginia, Louisiana, and New Jersey. These changes also represent a shift to more support for the social 'S' in ESG. Exceptions to this include votes in California and Colorado where voters decided not to shift the property tax burden more heavily to businesses:

California's property tax regime under Proposition 13 remains intact: A proposed seismic shift that would have changed the manner in which assessed valuations are determined for business properties (Proposition 15) was narrowly defeated, while amendments to Proposition 13 at the margins, such as those that benefit seniors, continue to be approved (Proposition 19). Repeal of the Gallagher Amendment in Colorado (Amendment B) resulted in stopping residents' property tax rollbacks which had ultimately shifted more burden to businesses.

### **Local Law Enforcement Reforms**

Following a summer marked by police protests in the wake of the May killing of George Floyd in

Minneapolis, 14 cities and counties had elections addressing policing policies and procedures. Questions were on the ballot in seven states, from California to Ohio. Initiatives designed to change police duties, limit general funds spent on police operations, establish oversight boards and improve transparency found broad support in jurisdictions across the U.S., with 15 of 20 passing. For the most part, the changes are not expected to affect credit quality. However, should they result in notable revenue or expenditure changes that affect a jurisdiction's financial position, there could be an impact.

This report does not constitute a rating action.

---

## **Fitch Ratings Releases U.S. Public Finance Transition and Default Study.**

Related Fitch Ratings Content: [U.S. Public Finance 2019 Transition and Default Study](#)

**Fitch Ratings-New York-17 November 2020:** U.S. Public Finance rating activity was largely positive in 2019, resulting in downgrades trailing upgrades by a ratio of 0.6 to 1, according to a recently published study by Fitch Ratings. However, USPF rating activity through October 2020 reversed the positive trend, with downgrades exceeding upgrades by 1.7 to 1.

U.S. Public Finance accounted for one speculative grade default in 2019, the charter school Cambridge Academy East, AZ, with debt issued by the Industrial Development Authority of Pima County, AZ. The resulting 2019 U.S. Public Finance default rate was 0.03%.

The average annual default rate remained low at 0.04%, across the historical 1999-2019 period.

This new study provides transition and default analysis on Fitch's U.S. Public Finance ratings in 2019 and over the long-term period from 1999-2019. The report provides summary statistics on 2019's key U.S. Public Finance rating trends.

The full 'U.S. Public Finance 2019 Transition and Default Study' is available at [www.fitchratings.com](http://www.fitchratings.com).

Contact:

Charlotte L. Needham  
Manager, Senior Director  
+1 212 908-0794  
[charlotte.needham@fitchratings.com](mailto:charlotte.needham@fitchratings.com)  
Fitch Ratings, Inc.  
Hearst Tower 300 57th St.  
New York, NY 10019

Laura Porter  
Managing Director, U.S. Public Finance  
+1 212 612-7850  
[laura.porter@fitchratings.com](mailto:laura.porter@fitchratings.com)

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

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

---

## **Fitch Ratings Updates Criteria for US NFP Hospitals & Health Systems and State Revolving Funds.**

### **Related Fitch Ratings Content:**

- [U.S. Public Finance State Revolving Fund and Municipal Finance Pool Program Rating Criteria](#)
- [U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria](#)

**Fitch Ratings-Austin-18 November 2020:** Fitch Ratings has made minor updates to its 'U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria' as part of the routine criteria review process. This update replaces the criteria report of the same name published in November 2019.

The changes are not substantive in nature and include updates to language regarding leases and official acceptance of the Portfolio Analysis Model (PAM) to conduct portfolio sensitivity analysis.

Fitch has also made minor updates to its 'U.S. Public Finance State Revolving Fund and Municipal Finance Pool Program Rating Criteria.' The update replaces the Fitch Analytical Stress Test (FAST) model with PAM as the model used to conduct portfolio analysis, where appropriate.

Fitch does not expect any impact on existing ratings from the updates to either criteria.

### Contact:

Kevin Holloran  
Senior Director  
+1 512 813 5700  
Fitch Ratings, Inc.  
111 Congress Avenue, Suite 2010  
Austin, TX 78701

Major Parkhurst  
Director  
+1 512 215 3724

James Batterman, CFA (PAM)  
Senior Director  
+1 212 908-0385

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

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

---

## **S&P: COVID-19 Activity In U.S. Public Finance**

[Read the S&P Report as of 11/17/20.](#)

---

## **GFOA Elected Official's Guides - Understanding the Fiscal Health of Your Community**

GFOA's elected official's series contains popular booklets providing practical and easy-to-understand explanations – in plain language – on a variety of public finance topics. Each one provides a thorough introduction to a single topic. An affordable price structure and quantity discounts make these booklets ideal for distribution to newly elected officials, government employees, citizen and taxpayer groups, the media, and others interested in local government finance.

### **Understanding the Fiscal Health of Your Community**

Prepared leaders make effective policy. Elected officials who understand the language and concepts of public finance can better assess the fiscal health of their communities.

[Purchase the guide.](#)

---

## **S&P: The Post-Election Landscape For U.S. Public Finance**

[Read the S&P Report.](#)

---

## **U.S. 2020 Election Investment Pulse: Neutral To Positive For Municipals.**

### **Summary**

- Many of the policies that a president will ultimately decide can be impactful. For example, tax policy, which could impact a state or local government's ability to raise their own taxes and impact demographics. But another impact is that it can also increase the attractiveness of munis as an asset class for investors.
- Regardless of how the two Georgia Senate runoffs are decided, we really don't expect Democrats to have the majority in the Senate that they really need to help Biden carry his policies through at the level he wanted. So we do expect there to be some gridlock, and that could hamper some of his policies.
- We're expecting additional stimulus, which should help stabilize some of the issues at the state and local levels. And then, we did see a lot of bond measures pass in the November ballot. And so, we expect there to be more bonds.

[Continue reading.](#)

### **Seeking Alpha**

Nov. 19, 2020

---

## **Fitch: US Election Largely Credit-Neutral to Healthcare Sectors**

Fitch Ratings-New York-17 November 2020: US election results are neutral to the credit profiles of corporate, not-for-profit and insurance issuers in the healthcare sector but legislative uncertainty remains, says Fitch Ratings. A divided Congress, due to a presumptive Republican-controlled Senate will translate into legislative gridlock but there is potential for some compromise, given President-Elect Joseph Biden's long career in the Senate. The fate of the Affordable Care Act (ACA) and support for Biden's healthcare proposals in the Senate are key credit-related items to watch.

Prior to the election, Fitch's U.S. corporates, not-for-profit and health insurance analysts studied the credit implications of three electoral outcomes. The scenarios were the status quo, reflecting a Donald Trump victory and a Republican-controlled Senate; a Democratic-party sweep, where Biden wins and Democrats control Congress; and a divided government, where the Presidency and Congress are controlled by different political parties. The Republicans currently hold a 52-48 majority in the Senate. If Democrats, which already control the House of Representatives, win the two Senate seats in the January runoff, they would also control the Senate due to Democratic Vice-President-Elect Kamala Harris' ability to cast tiebreaking votes.

Healthcare policy proposals outlined by Biden aim to build upon the ACA, which is being challenged before the Supreme Court of the United States (SCOTUS), but some proposals may still be viable even if the ACA does not survive. A decision on whether to strike down or uphold the law is anticipated by mid-2021.

Biden's proposals include expanding coverage, lowering healthcare and prescription drug costs and ending surprise billing. Bipartisan support on some less controversial proposals, including curbs on surprise billing and lowering drug prices, may be possible. The addition of a public insurance option and lowering Medicare's age eligibility seem less likely, given the pandemic's negative impact on the federal budget.

Contact:

Megan Neuburger, CFA  
Managing Director, US Corporate Finance  
+1 212-908-0501  
Fitch Ratings, Inc.  
33 Whitehall Street  
New York, NY 10002

Bradley Ellis, CFA  
Senior Director, North American Insurance  
+1 312 368-2089  
Fitch Ratings, Inc.  
One North Wacker Street  
Chicago, IL 60602

Kevin Holloran  
Senior Director, US Public Finance  
+1 512 813-5700  
Fitch Ratings, Inc.  
111 Congress Avenue  
Austin, TX 78701

Carla Norfleet Taylor, CFA  
Senior Director, Fitch Wire  
+1 312 368-3195

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

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

---

## **S&P: The Post-Election Landscape For U.S. Public Finance**



With the presidential election over, S&P Global Ratings offers a focus on the post-election landscape and what will be the key drivers related to credit across the broad and diverse U.S. municipal market. While U.S. fiscal federalism allows significant autonomy for the state and local government and enterprise obligors that comprise the municipal market, there are clearly fiscal interdependencies as well as regulatory and policy linkages with the federal government that influence their credit quality. Although there were substantive differences in the campaign platforms (see “U.S. Election: Promises, Policy, And The Potential Effects On The Economy And Corporate Credit,” published Oct. 19, 2020, on RatingsDirect), actual policy shifts during President-elect Joe Biden’s tenure will depend in part on the composition of Congress, which will be finalized in January. Administrative actions will also be something to watch. In the graphic above we highlight key issues we think will require credit focus across U.S. public finance. Below, we offer more detailed sector-specific views.

### **States: Uneven Economic Rebound And Policy Uncertainty Continue**

The ongoing COVID-19 pandemic and subsequent recession have affected the credit quality of states; over a quarter of our ratings in the sector have a negative outlook or have been downgraded, to date. A path to economic recovery remains unclear and shows meaningful regional variations. States have been aided by existing federal stimulus packages in funding pandemic response costs, but there has been little in the way of replacement of lost revenues. The November ballot measures were successful in legalizing recreational drugs and various types of gaming. Both will continue to provide new and additional revenues to states where taxed, although the amount of the revenue is not significant in replacing revenue streams lost to the pandemic. Other tax-raising measures on a statewide level generally failed. Some states continue to face budgetary imbalances for the remainder of fiscal 2021 as well as into fiscal 2022. For credit maintenance we would expect to see a number of options being utilized to balance current and out-year budgets, including expenditure cuts, reserve draws, other revenue raising options, and even limited deficit borrowings. There remains a possibility of additional federal stimulus, although it will likely have with more restrictions on use.

### **Fiscal policy with focus on health care**

Federal grants to state and local governments are concentrated in three major functions: health; income security; and education, training, employment, and social services. The most significant single program area is grants to states for Medicaid—estimated at \$458 billion of federal outlays to states in fiscal 2020, up from \$370 billion in fiscal 2016, an increase of 24%. The federal budget deficit in fiscal 2020 is estimated to be \$3.1 trillion, up from \$585 billion in fiscal 2016. Considering that entitlement programs—including Medicaid—are major drivers of the long-term fiscal deficits at the federal level, we expect that these programs will continue to be a short- and long-term focus. The U.S. Supreme Court is currently considering the case California v. Texas that brings into

question the constitutionality of the Affordable Care Act (ACA), and with it, potential enforceability and funding to states for Medicaid expansion, which is a centerpiece of the law. Should Medicaid and Medicaid expansion funding be altered, states would need to consider the structure of their health care programs and this would likely lead to changes in the overall budget structure as well.

### **Infrastructure**

From a credit perspective, we continue to look at the various economic policy decisions at the state and federal level. A once bipartisan policy issue that affects credit and economic direction is federal involvement, incentives, and funding of large-scale infrastructure projects. In a recent report we noted that in the decade following the Great Recession there was a \$1.5 trillion decline in state capital spending and infrastructure investment, compared to the capital spending growth trends prior to 2009 (see “Infrastructure After COVID-19: Risk Of Another Lost Decade Of U.S. State Government Capital Investment,” published Oct. 29, 2020, on RatingsDirect). This new paradigm was due to a number of factors, but mostly reflects a challenging operating environment and growing fixed-cost obligations, like pensions and other benefit costs through the lower-for-longer recovery period. A cohesive federal infrastructure program could help avoid another decade of underinvestment in the nation’s infrastructure and concurrently act as an economic stimulus (see “Infrastructure: What Once Was Lost Can Now Be Found-The Productivity Boost,” May 6, 2020).

### **Energy policy**

Another economic policy widely discussed on the campaign trail was around energy. Energy policy, most frequently packaged in a simplistic debate over fracking, could have a credit impact on energy-dependent states, but as we recently wrote (“How Diverging Energy Policies In The U.S. Presidential Election May Affect Credit Quality,” Oct. 23, 2020), we do not expect the Biden energy platform to have a meaningful credit impact on the nation’s oil-producing states, but it could accelerate developing trends toward less mineral extraction. However, an outright ban on new onshore permitting on federal lands could add pressure to certain states like New Mexico and Wyoming which are the largest recipients of federal royalty payments.

### **Local Government: Post-Election, Credit Pressure Does Not Subside**

#### **Stimulus**

Local governments remain on the front lines in fighting the pandemic, and with no post-election movement toward a meaningful state and local government stimulus package, we expect some governments will implement sizable expenditure cuts. Many issuers kept aside stimulus received earlier this year in anticipation of a third spike in COVID-19 cases; that will help manage costs but will not cure the budget gaps caused by revenue shortfalls. Severity and duration of this fall’s COVID-19 spike will play an important role in how prepared local governments are for 2021, particularly if any enhanced social distancing measures result in a notable slowdown in economic activity, especially during the holiday season.

#### **Economic/fiscal policy**

How much time elapses before a meaningful economic recovery will be a critical part of how local government credit quality is affected by a new president, and we do not anticipate the pace of recovery will be the same for everyone. Our expectation for an uneven health recovery includes both physical and fiscal health, and some regions and states will be hit harder than others. In the meantime, we expect there will be more one-time measures used to close budget gaps, including an increased use of reserves and some deficit bond issuance. Our focus when evaluating the budget balancing strategies of local governments remains on the long-term effect of choices made now, particularly if assumptions for 2021 recovery are optimistic or if one-time strategies include deferring maintenance or reducing pension contributions.

## **Infrastructure**

Looking further out in a Biden Administration, any major infrastructure package that includes local governments and schools would be a win-win in terms of both job creation and facility improvements.

## **Tax Policy**

Reinstatement of tax-exempt advance refundings would be a benefit to governments. Their elimination as part of the Tax Cuts and Jobs Act resulted in more limited refunding options thereby reducing budgetary flexibility.

## **Pandemic Policy**

Although more good news like Pfizer's announcement last week on a workable vaccine could come sooner than anticipated, we do not think it is likely to result in a quick return to business-as-usual for local economies; the imbalance is likely to be prolonged. In the meantime, we expect there will be deterioration in credit quality that could result in negative outlook revisions as the economic recovery takes (or doesn't take) shape. This could extend to downgrades in the most acute situations where short-term strategies have clear negative implications for long-term credit strength.

## **Health Care: ACA Support Is Key, But Watch Pandemic Response And The Supreme Court**

We believe that a Democratic administration, and a potentially mixed Congress (or lack of a super majority of Democrats in the Senate depending on the Georgia runoff elections) coupled with the pandemic and economic challenges, is unlikely to yield large health policy changes over the next couple of years. That said, we believe that the incoming administration's support of the ACA and coordination of a national COVID-19 strategy could be a net incremental benefit for not-for-profit acute care providers, as they represent a departure from the policies of the current administration. Other policy initiatives put forth by the new administration may take longer to play out, if implemented, and require additional details to allow for assessment of the impact on the not-for-profit acute care sector. Finally, the results of the California v. Texas case at the Supreme Court, along with the final determination of the Senate makeup, could have implications for the new administration's efforts to expand coverage and protections established by the ACA, and ultimately for not-for-profit hospitals. There are several key areas that we are watching.

## **ACA support and expansion**

With likely less ability to make major health policy changes such as introducing a public health insurance option or reducing the Medicare age, we believe that the new administration will continue to support the ACA through administrative actions to encourage insurance coverage within the current ACA framework, which we view as incrementally beneficial for not-for-profit acute care hospitals. Examples of actions could include restoring funds for ACA consumer outreach and sign-ups, elimination of short-term health plans, and elimination of certain Medicaid waiver programs with eligibility restrictions.

## **Other proposals and views of the new administration**

If the new administration is able to move forward on larger initiatives such as the public health insurance option or lowering the Medicare eligibility age, we believe it would likely take some time and the impact would initially be incremental and depend on the details. For example, providers could be negatively affected by a public insurance option if reimbursement tilts towards governmental rates and depending on how individuals and employers respond, but this could be partially offset by expanded insurance coverage. Other initiatives that we will monitor include potentially increased scrutiny of M&A activity which could negatively affect a hospital or health system's ability to fulfill strategic growth goals and address specific challenges. We view positively bi-partisan efforts to support rural health providers and telehealth, while the ongoing shift to value-based reimbursement would be viewed as neutral as most hospitals and health care systems have continued to invest in this area.

## **National strategy to address COVID-19**

If effective—and likely over the medium to long term—a national strategy to address COVID-19 could keep infections at more manageable levels and minimize disruption at hospitals as well as help manage supply expenses. However, it may not be possible for a national strategy to make a meaningful impact to hospitals in the near term given the currently high infection rates and different state approaches to managing the pandemic thus far.

## **ACA legal challenge**

We are monitoring the Supreme Court case *California v. Texas* which challenges whether the ACA can remain in place given there is no penalty associated with the individual mandate. There are different potential outcomes but a full strike-down of the law, which many believe is unlikely, would have the largest negative impact to individuals covered by various ACA programs as well as to acute-care providers. Among other changes, a full strike-down of the ACA would reduce eligibility for Medicaid and private insurance, or would rescind coverage for individuals currently covered under ACA programs. The new administration's ability to enact a remedy quickly, should there be an adverse ruling against the ACA, would be important to minimize disruption both to individuals and providers but may be a challenge if there is a split Congress. While we've seen hospitals adjust and accommodate to other adverse decisions, it may be more challenging to absorb the disruption now given the current operating challenges related to the pandemic. If the Supreme Court rules that the main provisions of the ACA can remain in place, we expect the new administration will continue its efforts to expand and strengthen coverage discussed above.

## **Higher Education: Potential Benefits From Increased Funding And Revised Immigration Policies**

For higher education, a Biden administration would likely lead to a significant change in priorities, and a reversal of position on certain issues, that could be credit-positive for colleges and universities. We expect the key policy focus areas for a new administration will be on the federal student loan program, the funding environment for federal grants and contracts, and possible revisions to immigration student policies affecting international students, and oversight of Title IX. Of most immediate significance will be the outcome of any additional funding for pandemic relief. Also, the pause on student loan payments currently in place for millions of Americans is set to expire soon and monthly payments will resume in January. If no actions are taken, this could cause material stress and uncertainty for borrowers at a time when coronavirus cases are rising and unemployment levels remain high, and could result in an increase in defaults.

Because of the breadth of colleges and universities serving the higher education market, the above federal policy issues would affect post-secondary institutions differently depending on the size and scope of the organization. Discussions around expanding free college, and further supporting workforce training and historically black colleges and other minority-serving institutions, are expected to continue. For smaller colleges and regional universities, any changes to the federal student loan program, or political pressure or legislation regarding student access, tuition levels, or post-graduation employment, could significantly affect operations and enrollment. Students at these institutions tend to be the most price-sensitive and in need of the most financial and academic assistance, and the institutions themselves highly reliant on tuition and fees as their main source of revenue. Larger, comprehensive research and national/international colleges and universities will be more affected by the outlook for federal grants and contracts, and international students.

## **Housing: Financial Benefits May Be On the Horizon**

Housing credits may see future financial benefits. Biden's "Build Back Better" plan provides support for additional unemployment benefits as well as other support for the economy and efforts to contain the pandemic. To the extent it is achieved, it will be a credit positive for the housing sector by

improving currently unemployed owners' and renters' capacity to meet their housing payments.

Biden's \$640 billion housing plan, "The Biden Plan for Investing In Our Communities Through Housing," released in February, also includes several notable features that would be a credit positive for the housing sector. These include a downpayment tax credit for first-time homebuyers that could drive increased demand for HFA single family mortgages, resulting in higher fee or annuity income. Biden's plan goes so far as to indicate its willingness to partner with state housing finance agencies in at least one instance: to help national service workers, including teachers and first responders access homeownership in certain neighborhoods. It also provides for expanded funding for community development financial institutions. The plan includes an expansion of the Low Income Housing Tax Credit program and the implementation of a new renter tax credit program. The plan also includes significant increased funding for the Section 8 voucher program—a positive for those PHAs that administer these programs.

## **Transportation: Show Me The Money**

### **Infrastructure**

We do not anticipate significant changes in the transportation infrastructure picture under a Biden Administration barring bipartisan agreement on funding sources, an obstacle that has stymied every grandiose plan in the past 20 years. The 2020 presidential election of course featured party platforms promising significant transportation infrastructure spending for repairing roads, bridges, and highways—with very different policy choices in terms of delivery and execution—but equally silent with respect to how to pay for it. An attempt to advance private transportation investment was made during the Trump Administration (see "President Trump's Infrastructure Plan: A Substantive Shift To Private-Sector Funding," Feb. 14, 2018), but it ultimately failed to get traction. We anticipate a similar outcome for the alternate reform agenda from the Biden Administration focusing on public investment while simultaneously addressing climate change, social equity and other policy objectives. Without some grand bargain, this 180-degree change in priorities will run into the same status quo roadblocks imposed by the current political gridlock and federal budget math (i.e. finding new revenues or budgetary offsets). And while states have been back-filling spending with gas tax increases and other measures, they risk another period of under-investment as the COVID-1-triggered recession is expected to pressure transportation budgets.

### **Transportation legislation**

Before too long, the Biden Administration will encounter the can kicked down the road this past fall called the FAST (Fixing America's Surface Transportation) Act highway law, which was set to expire on Sept. 30 but will now expire in the fall of 2021. Unable to reconcile different proposals, Congress passed and President Trump signed into law an extension that provided certainty of funding to states and regional infrastructure providers including transit agencies. But looming in the next reauthorization will be difficult decisions regarding a long-term solution to make the Highway Trust Fund (HTF) solvent. The HTF gets its revenues from a 24.4 cents-per-gallon diesel tax and 18.4 cents-per-gallon gas tax last increased in 1993 but pays out more every year than it takes in. We anticipate a Biden Administration to be more supportive of big ticket, urban rail, and transit system projects—another reversal of the Trump era focus on rural investment—and may signal future budgetary emphasis in any COVID-19-related stimulus bill, which many large transit systems are requesting.

### **Public Power: Tightening Environmental Regulations Likely**

S&P Global Ratings expects the Biden Administration to pursue tightening environmental regulations governing the electric industry and its fuels. Such measures could directly and indirectly affect public power and electric cooperative utilities' operations, their costs of doing business, retail rates, their financial flexibility, and possibly their ratings.

## **Energy policy**

During the run-up to the election, Joe Biden and Kamala Harris voiced unfavorable views of fossil fuels. The Biden energy platform—including recommitting to the Paris climate accords and variants on the Green New Deal—might be costly and technologically challenging. Whether the new administration can achieve its objectives could depend on the composition of the Senate, which will not be known until January. However, it is possible that the administration will bypass legislative gridlock through executive orders and regulatory pronouncements. We see precedent for such actions in the 2015 Clean Power Plan, one of the most far-reaching carbon emissions regulations to come out of the Obama Administration’s Environmental Protection Agency.

If a Biden administration restrains fracking, natural gas prices could rise sharply. Natural gas is the primary input for producing electricity in the U.S. Consequently, consumers might see higher electricity costs. Higher retail rates could limit utilities’ financial flexibility and potentially erode financial margins. We believe rate affordability plays an important role in influencing public power and electric cooperative utilities’ credit ratings. In addition, because affordability and consumer acceptance place limits on the rates utilities charge for essential electric service, it is possible that spending for environmental compliance costs could come at the expense of investments in the reliability and safety of the electric grid. In recent years, many state initiatives for reducing carbon emissions, other greenhouse gas emissions, and the solid byproducts of electricity production, emphasized utilities transitioning to wind and solar resources. Some of the more ambitious of these initiatives appear to discount the intermittency of renewable generation and the insufficiency of existing storage technologies to counter intermittency. Neither solar nor wind produce electricity around the clock and current technologies do not provide capacity to store enough of the surplus solar and wind electricity produced during peak production hours to cover the nonproduction hours and could lead to less reliable electric service (see “California’s Rolling Blackouts Could Foreshadow Rating Pressures For Public Power And Electric Cooperative Utilities,” Sept. 10, 2020). Federal initiatives that build on state initiatives and that do not appropriately account for intermittency and storage issues could face similar pitfalls.

We expect the trend of significant coal plant closures seen in recent years to continue during Biden’s presidency. If public power and electric cooperative utilities are compelled to close undepreciated power plants, their financial performance could face pressures. Although public power and electric cooperative utilities can look to their essentially captive customer bases to recoup uncompensated investments, this could be financially burdensome to customers, particularly if these utilities need to secure alternative sources of electricity production that add costs.

Ultimately, whether the new administration’s environmental policies will affect the credit ratings S&P Global Ratings assigns to public power and electric cooperative utilities will depend on how much of the campaign platform translates into new regulations and legislation, and its costs.

## **Water Utilities: Regulatory/Environmental Policy Issues Are Key Focus**

### **Fiscal policy**

We would expect that a President Biden’s first budget would double down on environmental protection, on top of his platform of giving environmental justice a higher priority, so it is likely those programs will be preserved if not increased.

### **Regulatory focus**

S&P Global Ratings anticipates that the Biden Administration will end the “two for one” whereby the Trump Administration had a stated goal not to implement new rulemaking unless two existing rules could be eliminated. In fact, we expect increased regulation—and, potentially legislation—related to the federal Safe Drinking Water Act. There is bipartisan support even in a divided Congress to

consider formal rulemaking on per- and poly-fluoroalkyl substances compounds, though less certain would be any federal participation in remediating certain contaminated sites. We also expect finality on the long-awaited update to the 1991 Lead and Copper Rule; final public comments were received earlier in 2020. It is unclear if Biden would modify or even rescind the October 2020 executive order related to water. That executive order established a federal “sub-cabinet” aimed at reducing bureaucracy and duplication of efforts among agencies and departments tasked with federal water supply and watershed management, among other stated goals.

### **Environmental, social, and governance policies**

Because President-elect Biden also made climate change a centerpiece of his campaign, we would expect him to swiftly re-commit the United States to the 21st Conference of the Parties, commonly known as the Paris climate accords. In our view this is more impactful to electric and gas rather than water and sewer utilities. However, if recent proposed legislation—none has yet moved beyond committee—is any indication, Congress has acknowledged the rising cost of utility services to households and the related social credit factor of affordability. Specifically, one bill proposed a drinking water version of the federal Low Income Home Energy Assistance Program, which provides grant money to qualifying communities for certain expenses like customer bill pay assistance programs. This would be especially welcomed in communities that saw outsized COVID-19 economic destruction.

### **Infrastructure**

We do anticipate that Biden will propose some type of infrastructure stimulus package, although it is not yet known which asset classes might be targeted. It would not be unreasonable to assume policy goals aimed at improving mitigation from and adaptation to impacts from climate change. Lastly, once the report to Congress from the recent federal stormwater task force is received, likely in early 2021, there could also be additional federal support, at least for technical assistance for infrastructure projects that naturally lend themselves to pre-disaster resilience.

This report does not constitute a rating action.

---

## **Don't Discount States for U.S. Climate Progress.**

### **The Biden administration should look to states as a laboratory for innovative climate action.**

All climate policy eyes are on Washington, D.C., these days and for good reason. The fact that President-elect Joe Biden puts climate change among his top four priorities promises significant progress at the federal level, with or without the Senate. But don't forget states as a crucial driver of climate progress.

During the four years of the Trump administration, states have served as a backstop, while federal climate action has been backsliding. Yet states' roles go well beyond that. They often serve as a laboratory for new ideas as well as a conduit by which federal agencies make progress.

California is typically held up as the state with the most progressive climate agenda. It is, but it is hardly alone. Per the Center for Climate and Energy Solutions, 23 states plus the District of Columbia have their own greenhouse-gas reduction targets. States as diverse as New York, Montana, and Louisiana have net-zero greenhouse-gas emissions targets by midcentury. Ten Northeastern states have a power-sector emissions trading system that caps their emissions and establishes a

price per metric ton of CO<sub>2</sub>, albeit a low one. Virginia is poised to join in 2021 as the eleventh, while California has its economy-wide system plus additional ambitious sector-specific policies.

Meanwhile, 29 states and the District of Columbia have renewable portfolio standards, which require a certain portion of the state's electricity mix to be low- or zero-carbon. These standards drive emissions reductions by as much as 10% to 25% below where they would otherwise be. Economists are quick to remind us that these reductions come at a cost. A recent analysis by University of Chicago economists Michael Greenstone and Ishan Nath concludes that costs range from between almost \$60 to \$300 per metric ton of CO<sub>2</sub>, well above California's and even the European Union's economy-wide carbon prices of around \$17 and \$32, respectively.

This only shows that the power-sector standards are significantly more ambitious than existing cap-and-trade systems and also achieve more emissions reductions. The higher prices paid may well be worth it. They are, after all, within the range of the latest cost-of-carbon estimates of \$100 and often much higher.

State-level electricity sector policies are also an important part of federal climate policy. The Federal Electricity Regulatory Commission (FERC) is an independent body charged with regulating interstate electricity transmission, and with reviewing energy infrastructure projects. Its legal charge is economic regulation, which makes it an all-the-more powerful voice in the climate fight.

FERC's power – and, thus, threat to fossil interests – was brought to the fore with the recent demotion of Neil Chatterjee, a former energy advisor to Senate Majority Leader Mitch McConnell and Trump appointee. He was replaced as chair in retaliation for supporting “state-determined carbon pricing” in wholesale electricity markets. While the Biden administration is poised to seek a more expansive role for FERC in advancing climate action, a significant part of that impact will still rest on state-level policies.

States are also an important laboratory for new ideas. California, while often out front, is far from alone. In 2018, Washington State saw a state-level carbon pricing initiative fail at the ballot box, to a large part because of stiff fossil fuel industry opposition. The oil industry spent \$31 million to defeat the measure, led by \$13 million from BP alone.

The campaign in Washington State is continuing, this time with a potentially important post-pandemic twist: the carbon tax is tied to green bonds focused on investing in a green economic recovery. The state has had prior experience with similar bonds, raising over \$50 million in 2015 to invest in a number of energy efficiency and conservation efforts.

The additional benefit: The idea of green bonds tied to a new revenue source helps solve binding state-level fiscal constraints. It also ties nicely into Biden's “building back better” mantra. While Washington State's idea may not serve as a template for Washington, D.C., directly, versions of the idea may well be duplicated in other states, facing similar fiscal situations.

Most of these state-level efforts are indeed bottom-up, developed organically in municipalities and states. Yet there, too, might be a role for the Biden administration. The principle of testing large government policies in multiple local and regional pilots before a nation-wide implementation is not as ingrained in the U.S. as, for example, in China. There, the concept of shidian (试点), a focus on local entry points and testing for national policies, is indeed at least partially formalized. U.S. federalism – and the European Union's subsidiarity principle – allow for a version of this. Learning from local experiences ought to be an important component of more centralized efforts.

**Bloomberg Green**

By Gernot Wagner

November 20, 2020, 3:00 AM PST

---

## **What Cities Need From the Biden Administration in the First 100 Days.**

### **Covid-19 financial relief, housing help and gun violence research are among the top priorities for local governments.**

Municipal leaders have a privileged position in America: We see first-hand how policies affect the 200 million people we represent in our cities, towns and villages. We are also the first to respond to the challenges our communities face, and the first to provide the resources our residents need.

While most of the last 10 months have been devoted to our immediate duty to protect our residents from the spread of Covid-19, it has also given us an important opportunity to examine the future of our hometowns, including how to address the systemic challenges that predated — and are now exacerbated by — the pandemic. Whether it's ensuring our cities are built to meet the needs of all our residents, providing help for working families struggling to support their households, or eradicating persistent inequities in our civic institutions, the challenges before us have been thrown into sharp relief.

Building more equitable cities at a time when we are fighting an uphill battle to rebuild our economy is no easy task. To tackle the monumental challenges before us, we need more from officials at the federal level. Below are the five most urgent priorities for local governments that the National League of Cities asks the administration of President-elect Joe Biden to address in its first 100 days.

#### **Provide Covid-19 Relief for Local Governments**

Local governments are facing more than \$360 billion in revenue shortfalls over the next three years due to the pandemic, forcing municipal leaders to grapple with devastating cuts to essential services and personnel — including those that have been integral to local pandemic response and economic recovery efforts.

In Ruston, Louisiana, Mayor Ronny Walker said his city “wouldn’t have had to cut a single person from our payroll if Congress had done for cities what they did for businesses” through the Paycheck Protection Program. Pittsburgh Mayor Bill Peduto said laying off 10% of city employees would only make up a quarter of his city’s budget shortfall for the next year, and that in the coming years, “what you’re going to see in cities is more cuts to essential services.”

While negotiations over a comprehensive Covid-19 relief package remain stalled in the current lame duck session of Congress, local leaders are making difficult decisions to protect families, municipal workers and America’s economic future. It’s past time for the federal government to fulfill its responsibility to our local heroes serving on the front lines of the pandemic, and we strongly urge the Biden administration to work collaboratively with both parties in Congress to secure a Covid-19 relief package that provides direct federal aid to local governments and municipalities of all sizes.

#### **Build Sustainable Infrastructure**

Even before the pandemic, much of our nation’s infrastructure was in dire need of repair, improvement and modernization to meet the demands of the 21st century. Local governments have

been forced to delay or cancel projects to repair roads, water systems and other critical infrastructure due to budgetary constraints caused by the pandemic, underscoring why it is more important than ever for the federal government to support infrastructure projects that will help put Americans back to work. Just this week, New York City's Metropolitan Transit Authority was forced to consider a plan to cut 40% of weekday subway services and lay off more than 9,000 transit workers absent support from the federal government — an “end to the New York way of life,” as one official said.

Current transportation funding sources like the Highway Trust Fund are on track to be depleted as soon as 2021, according to recent CBO projections. By providing grants, tools and resources to support local infrastructure efforts, the federal government can do more than just ensure the safety and mobility of our communities; it can help make our communities more resilient in the face of extreme weather events and natural disasters, many of which we faced this year in the midst of the global pandemic.

It is also essential that the administration make investments in broadband service. With more people working and schooling from home, the need is clearer than ever before to ensure reliable, affordable broadband access for all Americans — particularly those in small and rural communities.

### **Provide Support for Building a Skilled Workforce**

With the nature of work rapidly evolving due to the Covid-19 pandemic and technological advancements, we need enhanced workforce training programs to ensure our residents and communities can continue to play a central role in our nation's economic recovery. As more Americans prepare to re-enter the workforce after historic levels of unemployment, it is necessary for the Biden administration to promote apprenticeship programs, expand financial aid programs for workforce skills training and create new pathways to successful careers for unemployed and underemployed Americans.

By investing in skills training and services to support participants, such as child care and transportation, the federal government can help city leaders build upon successful workforce development programs — particularly those that help remove barriers to accessing education and improve the likelihood that students will be able to finish college. This is particularly important for postsecondary students attending college during the current Covid-19 crisis who are being forced to remain or return to homes that may lack access to the internet or who, in some cases, may have no home at all.

Cities are counting on Biden to empower local workforce solutions, streamline federal funding and drive new resources into proven solutions to ensure that all people have opportunities to thrive.

### **End Housing Instability and Homelessness**

The Covid-19 pandemic has been a catalyst for housing instability in the U.S. The nationwide moratorium on evictions has not prevented some landlords from evicting their residents, and 8 million tenants face the prospect of evictions when it ends in January 2021.

With more Americans out of work and unable to afford their basic needs, including housing, it is critical for the new administration to address housing instability and homelessness.

Cities need new policy solutions to stabilize and stem the loss of public and affordable housing. They also need the resources to expand promising ideas like “housing first programs,” which focus on providing immediate permanent housing — regardless of circumstance — to people experiencing

homelessness. Before the Covid-19 pandemic, several housing-first pilots were yielding notable progress. President-elect Biden can take meaningful steps toward ending homelessness by expanding these types of programs, as well as those that provide mental health and emergency services that residents need to stay stable and sheltered.

## **Reduce Gun Violence**

Gun violence continues to plague our society, claiming the lives of thousands of Americans each year and tearing apart the very fabric of our communities. Our nation has seen a rise in gun violence since the onset of the pandemic, creating twin public health crises that threaten to undermine the safety that local leaders are entrusted to deliver to their residents.

The National League of Cities calls on Biden to convene a national commission on gun violence, including elected officials from all levels of government, victims' family members, survivors, gun advocates and law enforcement to offer recommendations on ways to reduce gun violence. In recognizing gun violence as a public health issue, the Biden administration should provide funding to the Centers for Disease Control to conduct comprehensive research to identify the underlying causes that lead to gun violence and mass shootings in communities.

If we are going to truly "Build Back Better"— a central theme of Biden's campaign — we must ensure the administration maintains a strong and close working relationship with local leaders from across the country. We know our communities best and are best positioned to help the new administration address the systemic issues that have long impacted them, only to now be exacerbated by the Covid-19 pandemic.

## **Bloomberg CityLab**

Joe Buscaino

November 20, 2020, 7:33 AM PST

*Joe Buscaino is the President of the National League of Cities and the President Pro Tempore of the Los Angeles City Council.*

---

## **[Congress is Forcing Cities to Defund the Police, Firefighters, and Schools.](#)**

**Cities that had barely recovered from the Great Recession face huge budget shortfalls yet again.**

America's mayors are begging for help.

Unless Congress passes a coronavirus relief package, cities and towns across the country are going to struggle "to keep the lights on" and perform basic services like responding to 911 calls, Joe Buscaino, president of the National League of Cities and president pro tempore of the Los Angeles City Council, told Axios.

In May, the National League of Cities (NLC) found that US cities are facing a \$360 billion revenue shortfall over the next three years. And since then, there's been little movement from the federal government to provide the support needed to avoid furloughs and cuts to basic, necessary services to keep cities afloat as they govern through the Covid-19 pandemic.

[Continue reading.](#)

**Vox.com**

By Jerusalem Demsas

Nov 19, 2020

---

## **Cities Still Need Their Lifeline From the Fed.**

### **Extend the Municipal Liquidity Facility beyond Dec. 31.**

America's state and local governments face a difficult winter. Already under severe financial pressure, their resources will be stretched still further by a resurgent pandemic. Congress needs to give them new fiscal aid right now, but whether that will happen is in doubt.

Given these uncertainties, this is no time to remove the one reliable lifeline they have: the Federal Reserve's highly successful effort to ensure they can borrow what they need.

The Fed and the Treasury introduced the program, known as the Municipal Liquidity Facility, amid the Covid-induced mayhem of March and April — when markets froze and borrowing costs more than doubled for even the most highly rated cities. To restore calm, the central bank pledged to buy debt securities directly, at a closer-to-normal yield, from any creditworthy issuer that couldn't raise money from private investors.

It worked. Simply by being in place, the backstop revived the market. It brought yields below pre-pandemic levels, and only two issuers (Illinois and New York's Metropolitan Transportation Authority) actually had to tap it, using less than \$1.7 billion of the \$500 billion available. It's hard to imagine a more effective use of taxpayer resources.

Just one problem: The program expires Dec. 31, and — as Bloomberg News has reported — Republican legislators and the Treasury have opposed an extension. This wouldn't be so serious if the coronavirus crisis were ebbing and the economy were on a glide path to recovery. They're not. Cases and hospitalizations are on the rise in most states, threatening renewed social-distancing measures and a slower expansion (or worse). This will reduce municipal tax revenues again — and they're already projected to come up hundreds of billions of dollars short. Layoffs and service cuts are looming. And with Republicans likely to retain control of the Senate, it's unclear when, if ever, legislators will support a new relief package.

To be sure, borrowing is no substitute for fiscal support. But the backstop is crucial to help municipalities weather these stresses. It should remain in place until officials are certain it's no longer needed, as happened with emergency lending facilities after the 2008 financial crisis. The central bank should also consider expanding access — for example, by lowering the population threshold from the current 250,000, so struggling smaller cities can benefit.

Judging from the lack of jitters in municipal bond markets, investors are assuming that common sense will prevail. It's to be hoped they're right. The Trump administration should extend the facility immediately and, if it fails to do so, President-elect Joe Biden should pledge to set things straight after he takes office on Jan. 20. The finances of cities and states across the country depend on it.

## **Bloomberg Opinion**

By Editorial Board

November 17, 2020, 6:30 AM PST

---

### **Congress Splits Along Party Lines Over Fed-Facilities Move.**

- **Democrats criticize secretary for seeking to end the programs**
- **GOP Senator Pat Toomey says facilities have done their job**

Lawmakers split along party lines on U.S. Treasury Secretary Steven Mnuchin's move to shutter a number of Federal Reserve emergency-lending facilities that relied on his agency's backing.

"Ending emergency programs specifically intended to support the economy through this crisis is irresponsible and misguided," Democratic Representative Richard Neal of Massachusetts, chairman of the powerful House Ways and Means Committee, said in a statement. "The Covid recession is not over. Millions of workers remain without jobs, and the futures of businesses across the country continue to hang in the balance."

By contrast, Republican Senator Pat Toomey of Pennsylvania, a member of the congressional panel monitoring pandemic relief funds at the Treasury and Fed, said in a Bloomberg TV interview that the facilities have served their purpose to stabilize markets and are no longer needed.

"These were always meant to be very temporary facilities," he said Friday. "I'm not surprised that a central bank would like to keep more power and more tools, but that doesn't make it right."

Mnuchin, in a letter to Fed Chairman Jerome Powell released by the Treasury on Thursday, ordered the sunset of five of the central bank's facilities designed to buffer the impact of the coronavirus pandemic, while asking for four others to be extended for 90 days. The Fed then released a statement underlining its preference for the "full suite" of measures to be maintained into 2021.

Senate Majority Leader Mitch McConnell said the "obvious use" for the hundreds of billions of unspent dollars is to re-purpose the funds for small business relief and vaccine efforts. Congressional leaders have been deadlocked for months over how much to spend on additional stimulus and where to allocate the money.

"American workers should not lose their jobs needlessly when a second round of the job-saving Paycheck Protection Program for the hardest-hit small businesses would make a huge difference," McConnell said in a statement.

Democratic Representative James Clyburn of South Carolina, chairman of the House Select Subcommittee on the Coronavirus Crisis, said the facilities that will no longer be able to purchase new assets beyond December were "part of a comprehensive set of tools Congress gave the Federal Reserve to combat the pandemic-related economic crisis."

Clyburn asked Mnuchin to rescind his request, and suggested congressional Democrats may encourage President-elect Joe Biden's Treasury chief to reestablish the programs next year.

Toomey said that he doesn't believe a Biden administration would have the legal power to extend the facilities on its own, but that Congress could re-authorize the lending programs if economic

conditions worsened.

House Speaker Nancy Pelosi accused Mnuchin of trying to hobble the next administration's ability to deal with the economic fallout of the continuing pandemic.

"Why? — Because they want to impede the ability of the administration to have everything available to them?" Pelosi said Friday at her weekly news conference.

The congressional watchdog monitoring the Fed and Treasury's relief efforts divided last month over whether one of the programs Mnuchin has ordered to be ended — which supports the municipal-debt market — should continue.

The panel's two Democrats wanted the Municipal Liquidity Facility not only extended, but its terms adjusted to make it more favorable for bond issuers. State and local governments also lobbied to expand the program.

But Republicans on the oversight commission said the program, which had made only two loans at that point, had served its purpose to restore liquidity to the municipal bond market.

## **Bloomberg Politics**

By Laura Davison

November 20, 2020, 9:05 AM PST Updated on November 20, 2020, 11:47 AM PST

---

### **Treasury-Fed Clash Exposes Broader Policy Stress.**

**Pressure is growing on the ability and willingness of officials to maintain the scale and scope of their initial responses to Covid-19.**

Global markets woke up Friday morning to indications that exceptional and lasting policy support may be less certain than widely assumed. While short-term political considerations may well be playing a role — a view that most investors will be quick to grasp, dismissing the news as "noise" and reversible — a bigger phenomenon may well be in play: What was first designed as a huge "one-round" policy intervention has turned out to be much more than that, and the longer this "multiround" process persists, the greater the pressure on the ability and willingness of policy makers to deliver, especially in parts of the developing world.

Having eagerly supported the Federal Reserve's massive intervention in financial markets in March and April, outgoing Treasury Secretary Steven Mnuchin seems to have surprised even the central bank late Thursday by refusing to extend backing for some emergency lending programs into next year and asking for the return of money for them. This immediately triggered an unusually public response from the Fed lamenting the decision and stressing that the "full suite of emergency facilities" plays a key role as "a backstop for our still strained and vulnerable economy."

Some economists and market participants initially interpreted this as yet another indication of a problematic transition from the Trump administration to the incoming Biden team — one that is already complicating the country's response to the surge in Covid infections and hospitalizations and may well play out in foreign policy and military affairs. Having said that, the implications are overwhelmingly viewed as both temporary and reversible under the new administration that will

take office on Jan. 20.

The Treasury's action came in the context of a general under-utilization of the Fed's programs. Some see this as a signal of low need, bolstered by Mnuchin's comment that "banks have the lending capacity to meet the borrowing needs of their corporate, municipal and nonprofit clients." Others feel that this under-utilization is due to the markets doing the work for the Fed, thereby increasing moral hazard and excessive risk-taking. Yet others are arguing the move is motivated by the desire to reallocate money to other programs such as the Paycheck Protection Program, effectively enhancing public sector support for the economy.

The U.S. is not alone in its policy support difficulties. In the U.K., the Treasury is facing a large increase in its fiscal imbalance, with the latest data from the Office for National Statistics showing that the deficit for the first six months of this fiscal year (April-October) amounted to a record 261 billion pounds. This is leading some to expect a public sector pay freeze to be announced as early as next week when the latest round of Covid-related lockdowns could well send Britain into a double-dip recession. Politics is also seen as playing a role as Prime Minister Boris Johnson is trying to gather Conservative Party support for his pivot toward greater military expenditure as part of the redefinition of the country's role on the world stage after Brexit.

Although short-term political considerations may well be playing a role, and these two countries can reverse course should policy makers so desire, a greater phenomenon exists that could well become more important the longer it takes to develop and distribute vaccines to counter the threat of Covid-19.

The initial global reaction to the economic "sudden stop" caused by Covid-19 was highly influenced by what worked for the global financial crisis: that is, a large-scale multifaceted intervention underpinned by the three notions of "whatever it takes," "all in" and "whole of government." At its essence, this is what in game theory terms would be labeled a "one round" policy response. Yet Covid is requiring several rounds of responses as illustrated by the new infection wave in many countries and the realization that vaccines will not be widely available until sometime next year.

As time has passed, a small but growing number of countries are finding it hard to maintain the scale and scope of their initial policy interventions. Well before these latest twists, the U.S. faced political resistance to renew one element after another of its initial fiscal relief, and the U.K. reduced support for those facing job challenges before having to reverse course.

Markets will be quick to dismiss the latest developments, especially in the U.S., where a new administration is likely to restore funding and the Fed can in the interim augment the quantitative easing program already at its discretion. But they should not ignore the warning signs. Particularly in the developing world, policy makers' willingness to continue to carry out a multiround policy response will increasingly face a harsh reality: that of declining ability.

## **Bloomberg Opinion**

By Mohamed A. El-Erian

November 20, 2020, 7:15 AM PST

---

**[Without Fed's MLE, Stakeholders Warn of a Fragile Future for Munis.](#)**

Issuers will lose a financial, if not psychological, backstop from the Federal Reserve at the end of the year and some participants fear the municipal market will become more fragile, less resilient and more prone to shocks amid another wave of coronavirus cases.

Following Treasury Secretary Steve Mnuchin's move on Thursday telling the Fed to sunset emergency lending facilities created in response to the coronavirus Thursday, including the Federal Reserve's Municipal Liquidity Facility, the news struck some municipal stakeholders as poorly timed and made them wary of the muni market's future.

"As a country and a financial market, we're not out of this yet," said Matt Fabian, partner at Municipal Market Analytics. "So theoretically we should be layering on more tools, not removing them."

Fabian called the MLF an insurance policy for both borrowers and investors.

"Now, without the MLF, the market becomes more fragile and more susceptible to setbacks, illiquidity and maybe selling if things turn negative," Fabian said. "If credit trends turn even more negative, if fears of a major issuer defaulting or having trouble paying begin to grow," those trends could weigh on the industry.

As COVID-19 deaths continue to climb, the Treasury's timing "is poor," Fabian said.

More than 2,000 American deaths were recorded by John Hopkins University in one day on Thursday, the highest since May. There are now over 11 million recorded COVID-19 cases in the U.S.

Mnuchin asked in a letter sent to the Fed to return unused funds to the Treasury from the MLF and four other lending programs created under the CARES Act.

And while some sources said the move was not unexpected given how well the municipal market has performed since the sell-off in the spring, the withdrawal of the MLF means that next year, investors will become more concerned about issuers' ability to pay debt because of renewed economic shutdowns, Fabian said.

"It just makes us more fragile," Fabian said. "If there is a shock to the system, like we have multiple states shutting down their local economy or say tax collections are postponed again to make it easier on taxpayers, that is a challenge that the MLF would help us get through, but lacking it, it means that states and cities are more on their own so investors will have to be more careful."

On CNBC Friday morning, U.S. Treasury Secretary Steven Mnuchin explained his reasoning for ending the CARES Act programs.

"It was very clear that Congressional intent is it expires on December of this year," Mnuchin said. "It is very clear in the law."

Lawmakers could legislate extending the MLF and sources expects appeals from lawmakers before the end of the year on the interpretation of Congressional intent.

The Fed had the authority under the CARES Act to lend up to \$500 billion for state and city issuers through the MLF. The U.S. Treasury provided \$35 billion from the Exchange Stabilization Fund, using funds appropriated under the CARES Act, for the program. The rest of the funding comes from the Fed.

So far, Illinois and the New York Metropolitan Transportation Authority have been the only issuers

to use the MLF. Both issuers this week said they intended to tap the facility before it expires and Mnuchin's announcement will not change those plans as both were allocated a portion of the money in the law.

Mnuchin also dug into the MTA on CNBC Thursday, saying the authority has a revenue problem and the MTA can currently borrow from the traditional market without the Fed.

"Let me just say, there is a big difference between grants and loans, and the areas of the economy right now that are really hard hit like the MTA, they need to work with the state and federal governments on how they're going to get grants to go forward," Mnuchin said.

MTA Chairman and CEO Pat Foye responded to Mnuchin's comments.

"We're glad Secretary Mnuchin has acknowledged the MTA has a serious and substantial revenue problem, that we have been devastated by the pandemic and that we are the economic lifeblood of New York and the nation," Foye said.

"We have been clear since the beginning of the crisis: Borrowing or cutting our way out of this is not an option. We need federal relief and we simply can't afford to wait any longer," Foye added.

But that is not stopping the MTA from using the MLF before it expires. The MTA's Board on Wednesday approved to borrow up to \$2.9 billion, its maximum available.

Many state and local governments have said they need direct aid from the federal government to get them through the pandemic. House Democrats passed a relief bill in May that would give \$915 billion in state and local aid, but Senate Republicans are not in agreement.

On Thursday, the Fed responded to Mnuchin's letter saying it, "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

The Fed is in the best position to say if facilities should be extended, Fabian said, adding that "if the Fed believes [the programs] should be continued, it's very likely that they should be continued."

Lawmakers have also weighed in, saying the facilities should be extended.

"The COVID recession is not over," said Rep. Richard Neal, D-Mass., chair of the House Ways and Means Committee. "Millions of workers remain without jobs, and the futures of businesses across the country continue to hang in the balance. Ending emergency programs specifically intended to support the economy through this crisis is irresponsible and misguided."

Sen. Bob Menendez, D-N.J., a member of both the Senate Banking, Housing and Urban Affairs and Senate Finance Committees called Mnuchin's decision "short-sighted."

Other market participants expect the worst is yet to come for municipal credit, so the MLF should be extended.

"The MLF exists in case the market does freeze like it did in March and April," said Tom Kozlik, head of municipal strategy and credit at Hilltop Securities. "It would be prudent for the Treasury and Fed to continue with that program for at least the next year, if not longer."

Others said the short-term effects of the Treasury's announcement won't have an immediate effect on the market, given high inflows and investors are not questioning what municipal credit will look

like in the near future.

Patrick Luby, municipal strategist at CreditSights, said the end of the MLF will not have a material, adverse effect on the municipal market.

“Its function of being the backup source of liquidity of the market has been demonstrated by the abundant liquidity available in the marketplace that it’s not needed right now,” Luby said.

The Fed and Treasury did a good job of moving quickly and providing comfort to the markets, Luby said.

Mnuchin also announced Thursday that the Money Market Mutual Fund Liquidity Facility would be extended by 90 days. The money market facility includes short-term municipal debt, including municipal securities, with maturities of 12 months or less. Market participants have said that facility has been more beneficial to more issuers than the MLF.

“Because the Fed opened up the MMMLF and accepted municipal VRDOs as collateral, that unlocked a lot of the dealer balance sheets to be able to take risks and provide liquidity to the rest of the muni market,” Luby said.

Meanwhile, Fabian doesn’t think volatility like the market saw in March is likely, but said the future is unpredictable.

“We are losing resilience, removing the MLF deprives the muni market of some resilience,” Fabian said.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11/20/20 03:37 PM EST

---

## **[Credit, Muni Markets Shrug Off Treasury Threat to End Fed Programs.](#)**

NEW YORK (Reuters) – The credit and municipal bond markets held fast on Friday morning after U.S. Treasury Secretary Steven Mnuchin defended his decision, first announced Thursday evening, to let several of the Federal Reserve’s key pandemic lending programs end on Dec. 31.

Mnuchin said on Thursday that some of the Fed’s stimulus programs, which have established the central bank as a lender of last resort to U.S. corporations and municipalities, should be allowed to expire and that the unused funds should be given to Congress to reallocate. The announcement was not expected by Fed officials, who had said this week that the programs should be extended, and told Mnuchin so immediately after his decision was made public.

The Fed programs were essential to restoring liquidity in financial markets in March, when nervous lenders seized up and both the credit and municipal bond markets reached levels not seen since the last financial crisis. But both markets were steady on Friday morning, as investors bet that the liquidity established by the Fed’s programs would not soon dissipate.

“Markets seem to be acting as if this may be an overblown event,” said Kevin Giddis, head of fixed income at Raymond James.

“While the market “righted” itself in March at the idea that these facilities were available so quickly,

funding away from the Fed became cheaper and easier for most companies in the capital markets versus Fed-assisted financing.”

The iShares exchange-traded funds tracking the high-yield HYG.P and investment-grade LQD.P markets both inched lower on Friday, with a slightly bigger move seen in LQD, last down 0.22%. The Fed’s Primary and Secondary Market Corporate Credit Facilities chiefly targeted investment-grade debt.

The \$3.9 trillion U.S. municipal bond market opened steady on Friday with Municipal Market Data’s initial read of its benchmark triple-A yield scale largely unchanged. The iShares National Muni Bond ETF MUB.N was up slightly.

The Fed’s \$500 billion Municipal Liquidity Facility (MLF) has so far only attracted two users – Illinois, the lowest-rated state, and New York’s Metropolitan Transportation Authority (MTA), which was hit exceptionally hard by a sharp drop in mass transit ridership due to the pandemic.

Greg Saulnier, managing analyst at Municipal Market Data, said Illinois and MTA bonds are trading inside the rates offered through the MLF and that muni market fundamentals are strong.

“Perhaps there is some marginal effect in terms of mentality without the safety blanket there, but I’m not sure how much of that will play out in terms of trading and spreads, if at all,” he said.

But Emily Swenson Brock, director of the Government Finance Officers Association’s Federal Liaison Center, said the loan program’s end comes as the resurgence of the virus threatens already weakened state and local government revenue.

“This is a pivotal time for states and local governments and to receive this news is extremely frustrating,” she said.

By Kate Duguid, Karen Pierog

Reporting by Kate Duguid; Editing by Alden Bentley, Chizu Nomiyama, Kirsten Donovan

NOVEMBER 20, 2020

---

## **[Investors Say Fed 'Backstops' Removed by Treasury Were Little Used but Lifted Confidence.](#)**

(Reuters) – A surprise move on Thursday by the U.S. Treasury Department to withdraw hundreds of billions of dollars used to support corporate, municipal and other bonds ravaged by the COVID-19 pandemic has injected some new uncertainty in global markets, investors said.

While the support wasn’t widely used, even its presence served to bolster investor confidence, said Andy Richman, director of fixed income strategies for Sterling Capital Management.

“They were there as a backstop and even the thought of them was seen as a safety net. If something did go wrong the Fed was there,” he said.

Richman said he expected slightly lower equity prices and higher bids for U.S. Treasuries as a safety play on Friday, though the impact could be dulled by other developments in Washington such as a

possible deal on relief spending.

Treasury Secretary Steven Mnuchin on Thursday told the Federal Reserve to return money earmarked for pandemic lending to businesses, nonprofits and local governments, ending on Dec. 31 some crisis programs that allowed the Fed to buy corporate bonds and make loans to small businesses and local governments.

The surprise announcement sent benchmark U.S. Treasury yields and equity index futures lower. The 10-year Treasury note yield US10YT=RR slid 2 basis points and was the lowest in 10 days at 0.83%.

Several investors said they were still trying to grasp the full implications of losing access to programs like the Municipal Liquidity Facility, which bought short-term notes directly from U.S. cities, counties and states.

“Without the MLF, the market won’t collapse, but it will lack some resilience if its tested by a selloff or more pronounced credit fears,” said Matt Fabian, partner at Municipal Market Analytics.

Isaac Boltansky, director of policy research for Compass Point Research and Trading, called the diminished role of the Fed “nonsensical” at a time when the U.S. economic recovery still seems shaky.

“This is a distressing development that injects uncertainty and instability into markets completely unnecessarily,” he said. He added that “How many times will Washington trip on its shoelaces in response to this crisis?”

By Ross Kerber

Reporting by Ross Kerber in Boston. Additional reporting by Karen Pierog in Chicago; Editing by Lincoln Feast.

NOVEMBER 19, 2020

---

## **Muni Market Faces Test With Cut to Fed Lifeline That Ended Crash.**

- **Treasury Secretary doesn’t intend to extend credit programs**
- **Backstop improved investor confidence, though few loans made**

In March and April, the Federal Reserve’s interventions in the municipal-bond market helped reverse a record-setting crash that erupted when panicked investors fled over concern about the financial impact of the coronavirus pandemic.

The central bank’s commitment to lend to states and local governments if needed helped the price of their bonds to rally and has left yields hovering around the lowest levels in decades, even though only two borrowers tapped the \$500 billion program.

Now, even with the coronavirus raging anew and states and cities still struggling to gauge the scale of the financial hits they’re facing, that support is poised to end. Treasury Secretary Steven Mnuchin late Thursday announced a decision to allow some of the Fed’s novel lending programs to lapse at the end of the year as scheduled, raising the risk that if the market seizes up again there won’t be anywhere for governments to turn as a lender of last resort.

"It doesn't make sense to pull away this kind of support at this stage," Thomas Graff, head of fixed income and portfolio manager at Brown Advisory. "This is like taking off your seatbelt as you pull into your neighborhood. It is probably fine. But it is all risk, no reward."

The nation's \$3.9 trillion municipal-bond market currently seems at little risk and prices edged up slightly Friday. Even as governments unleashed a record flood of debt sales last month, yields held not far from the record lows hit in August. New Jersey and Suffolk County, New York, which considered borrowing from the Fed, were able to borrow easily in the public markets at a lower interest rate this week. New Jersey paid yields of about 1% for three-year debt. Those securities have rallied and traded at a 0.5% yield Friday.

"That was a resounding affirmation that the market feels healthy enough," said Christopher Brigati, head of municipal trading for Advisors Asset Management Inc.

The market has also benefited from optimism about the initial results of two coronavirus vaccines. That's eased worries about the financial outlooks for a broad swath of borrowers, including airports and colleges, that have been heavily affected as the pandemic upended daily life.

Yet a turnaround is far from completely assured for states and cities whose tax collections tend to remain depressed long after the end of recessions, and the individual investors who dominate the market have frequently fled en masse in the face of bad news — a phenomenon that analysts call headline risk.

Agencies such as New York's Metropolitan Transportation Authority, the operator of the city's subway and bus system, are also pleading for help from Washington, where talks about a stimulus bill have made little headway since President Donald Trump's electoral defeat this month. It's not clear how much opposition Joe Biden may face once he takes office in January, since the political control of the Senate hinges on runoff elections in Georgia.

The MTA and Illinois were the only two to borrow from the Fed because they faced such large penalties in the public market, though other governments eyed it as a potential backstop that they didn't want to see withdrawn.

Before the Fed program lapses, the MTA has said it could sell \$2.9 billion in debt to the Fed. Illinois has also raised the possibility of borrowing from the Fed again.

Barclays Plc strategist Mikhail Foux said cash-strapped borrowers who are the target audience for the Fed's loans could be negatively affected by the end of the program, though he noted there may be little impact for the broader market. Bank of America Corp. analysts said in a report the end of the Fed program could be a "small negative."

"This is very disappointing, especially for weaker credits which are still facing the financial impact from the pandemic," said Gary Pollack, head of fixed income for private wealth management at Deutsche Bank. "On the other hand, the muni lending facility was not utilized that much because its interest rate was too onerous. But still it is a back-stop for those who need it."

## **Bloomberg Markets**

By Amanda Albright

November 20, 2020, 10:39 AM PST

— *With assistance by Joseph Mysak Jr, and Elise Young*

---

## **Fed to Return Lending-Backstop Funds to Treasury as Requested.**

- **Powell letter follows public rift that arose a day earlier**
- **Mnuchin argues money should be put to better use elsewhere**

The Federal Reserve said Friday it would comply with a Treasury Department request to return unused funds meant to backstop five emergency lending programs, moving to tamp down a public rift that arose a day earlier.

"We will work out arrangements with you for returning the unused portions of the funds allocated to the Cares Act facilities in connection with their year-end termination," Fed Chairman Jerome Powell said in a letter to Treasury Secretary Steven Mnuchin posted on the central bank's website.

Mnuchin on Thursday sparked a conflict between his agency and the central bank when he said he wouldn't agree to extend the facilities enabled by the Cares Act, passed by Congress in March. The law appropriated funds to act as loss-absorbing buffers that enabled the Fed to stabilize financial markets and make loans to companies and municipal debt issuers.

Mnuchin says the programs are no longer needed, and the money should be returned to Congress and put to better use elsewhere.

The Fed had responded on Thursday with its own statement, saying it "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

### **'Deeply Irresponsible'**

The move drew swift criticism from Democrats. President-elect Joe Biden's transition team spokeswoman, Kate Bedingfield, on Friday blasted Mnuchin's move as "deeply irresponsible."

The S&P 500 Index extended a weekly decline as traders weighed the dispute over the emergency lending programs. The credit markets seemed to hold up amid the uncertainty. Corporate bond investors continued to flood Carnival Corp.'s bankers with orders for debt.

On Friday, Powell conceded the Treasury's authority in the matter, saying in the letter that the Cares Act "assigns the Treasury secretary sole authority to make certain investments in Federal Reserve emergency lending facilities, subject to limits specified in the statute."

Some officials, including a Democrat sitting on the commission supervising spending under the Cares Act, have said the Fed wasn't legally required to return funds already transferred to it by the Treasury. But the Fed made clear it would not escalate the spat and would return the funds.

### **Other Funds**

Powell, in his letter, also appeared to urge the Treasury to consider using other funds held by Treasury to reauthorize at least some of the programs that will now be unable to make new loans after Dec. 31.

"As you noted in your letter, non-Cares Act funds remain in the Exchange Stabilization Fund and are, as always, available, to the extent permitted by law, to capitalize any Federal Reserve lending facilities that are needed to maintain financial stability and support the economy," Powell wrote.

The ESF contains about \$75 billion that pre-dates the Cares Act. Mnuchin has also left open the possibility of using that money to re-activate the programs, but appeared to characterize that as an emergency option.

“In the unlikely event that it becomes necessary in the future to re-establish any of these facilities, the Federal Reserve can request approval from the secretary of the Treasury,” Mnuchin said in his letter on Thursday.

The Fed, in contrast, believes the programs remain crucial. In an online event Nov. 17, Powell said the Fed would eventually shut down its emergency programs, but added, “I don’t think that time is yet or very soon, we will put those tools away.”

The programs affected include two that can purchase corporate bonds, one for municipal debt and one, the Main Street Lending Program, that makes loans to mid-sized companies through banks.

The programs will continue to hold existing assets and service loan agreements with banks. The Fed will retain about \$26 billion received by the Treasury to continue to backstop the loans already made. But the programs won’t be able to extend new credits unless they receive fresh funds from Treasury.

## **Bloomberg Economics**

By Christopher Condon

November 20, 2020, 1:50 PM PST Updated on November 20, 2020, 3:04 PM PST

---

### **[This Fed-Treasury Public Fight Has No Winners.](#)**

#### **The coronavirus crisis dream team of Jerome Powell and Steven Mnuchin cracks after the election.**

So much for the synergy between Federal Reserve Chair Jerome Powell and Treasury Secretary Steven Mnuchin in combating the fallout from the coronavirus pandemic.

In what might be an unprecedented public spat between two of the nation’s most prominent economic leaders, Mnuchin sent a letter to Powell on Thursday that said he would let certain emergency lending facilities created by the Coronavirus Aid, Relief, and Economic Security Act expire on Dec. 31, citing what he saw as “congressional intent.” Moreover, he requested that the Fed return almost \$200 billion of unused funds to the Treasury, which would “allow Congress to re-appropriate \$455 billion, consisting of \$429 billion in excess Treasury funds for the Federal Reserve facilities and \$26 billion in unused Treasury direct loan funds.”

The Fed responded almost immediately with a short statement: “The Federal Reserve would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy.” Shots fired.

At stake is the future of the Municipal Liquidity Facility, the Main Street Lending Program, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility and the Term Asset-Backed Securities Loan Facility. By contrast, Mnuchin requested a 90-day extension of the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Liquidity Facility and the Paycheck Protection Program Liquidity Facility.

I argued last week that it would be a mistake in particular to let the facilities for municipal bonds and small businesses expire, not just because their finances are the most imperiled by the pandemic but also because these programs are hardly used in the first place — a backstop in every sense. Those for corporate debt, on the other hand, don't seem quite as necessary given that junk-bond yields are near a record low and the investment-grade markets are wide open.

Mnuchin argues in his letter is that the facilities “have clearly achieved their objective,” rattling off municipal-debt issuance figures, corporate-bond spreads and rates on asset-backed securities. Still, the announcement flies in the face of Powell's long-held position — which was thought to be shared by Mnuchin — that “when this crisis is behind us, we will put these emergency tools away.” The Covid-19 pandemic is only worsening across America, from rural counties to New York City.

What happens now is something of an open question. Bharat Ramamurti, a member of the Congressional Oversight Commission, says the Fed can retain the \$195 billion that's already been committed to the lending programs established by the Cares Act. “That's why (I imagine) the Mnuchin letter is a ‘request’ to return the funds, not just asserting his authority to take the money back,” he said on Twitter.

It would be a remarkable move by Powell, who has repeatedly talked about the importance of elected leaders directing public funds, to deny Mnuchin's request outright. But at the same time, he said just this week that “I don't think the time is yet, or very soon,” to wind down the emergency facilities. Handing back the money would severely constrain the Fed and President-elect Joe Biden's pick for Treasury Secretary from easily firing them back up should the need arise. If the Fed no longer had the Cares Act money, it could only back the facilities with “Core ESF funds, to the extent permitted by law, or additional funds appropriated by Congress,” according to the letter.

Mnuchin, for his part, argued in an interview with Bloomberg News late Thursday that companies hurting from the pandemic need grants, not debt, and that he hopes the leftover funds are used to help the economy. Presumably, it would be significantly easier to sell Congress on appropriating these funds rather than working toward a bipartisan fiscal aid package, which has remained elusive for months and which President Donald Trump might not support anyway.

Tony Fratto, former assistant secretary for public affairs at the Treasury during the George W. Bush administration, said on Twitter that he's “never seen Treasury and the Fed in a public break. This is disturbing.”

Whether the markets interpret it as similarly unnerving remains to be seen. Early indications suggest S&P 500 futures didn't take kindly to a public spat between Mnuchin and Powell, a duo that investors have relied upon to remain above politics and keep the economy on the right track. That dream team is now infighting.

## **Bloomberg Opinion**

By Brian Chappatta

November 19, 2020, 4:06 PM PST

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

---

## **Treasury Seeks Unused Funds From Fed in Clash With Central Bank.**

- **Fed prefers programs 'continue to serve their important role'**
- **Treasury wants Congress to re-appropriate \$455 billion**

The Trump administration moved Thursday to end several emergency pandemic lending programs at the Federal Reserve, triggering a rare public rift when the central bank objected to the Treasury Department's instruction.

Treasury Secretary Steven Mnuchin, in a letter to Fed Chair Jerome Powell, sought a 90-day extension for four of the central bank's emergency lending programs, while requesting five other programs expire on schedule on Dec. 31 and the Fed return unused funds, allowing Congress to re-appropriate \$455 billion and spend the money elsewhere.

The Fed responded in a short statement that it "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

The conflict — a rare public rift between the Fed and the Treasury — comes as the U.S. recovery faces increasing pressure from a resurgent coronavirus pandemic and follows months of deadlock between Republicans and Democrats over the size and type of additional fiscal stimulus. Removing some of the emergency programs has the potential to leave the economy more vulnerable as President-elect Joe Biden prepares to take office in January.

"I am befuddled. It adds insult to injury to an economy that is about to be flooded by the surge in Covid cases, hospitalizations and deaths," said Diane Swonk, chief economist at Grant Thornton in Chicago. "If anything, Treasury should be shoring up the storm wall of these facilities."

Yields on 10-year Treasuries dropped about two basis points amid the news to end Thursday at 0.83%. U.S. stock futures pared gains into the close, and S&P 500 emini contracts were down about 0.9% early in the Asia session Friday. The Bloomberg Dollar Spot Index rose 0.2% Friday after five straight days of declines.

The emergency programs created by the Cares Act, the stimulus President Donald Trump signed earlier this year, were set to expire at year-end. Mnuchin is seeking to end the primary and secondary market corporate credit facilities, the Municipal Liquidity Facility, the Main Street Lending Program and the Term Asset-Backed Securities Loan Facility.

"The economy has responded very strongly, but there are still areas of the economy that need more support," Mnuchin said in an interview. "That's why I'm encouraging Congress to reallocate this money."

The secretary sought a 90-day extension for the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility.

Demand for Main Street loans has picked up in the last few weeks

The Fed programs were launched this spring to stabilize markets and extend credit to U.S. companies as the Covid-19 pandemic took hold. They helped quell the panic but take-up has been relatively low — which the Fed says is a sign that they've worked.

Republicans in Congress have used that to argue that they are no longer needed and the billions of dollars sent to the central bank to set them up can be deployed better elsewhere. Democrats, as well as the central bank, say that removing the safety net of these programs as the virus surges again through the country is not a good idea.

"I do think it's critical that the 13(3) programs, the public market backstop programs and programs that support Main Street and the PPP, that they continue beyond year-end. I think that's very important," Dallas Fed President Robert Kaplan said earlier Thursday in an interview on Bloomberg Television, referring to the section of the Federal Reserve Act providing the authority for emergency lending.

Republican Senator Pat Toomey, of Pennsylvania, praised Mnuchin's move. "With liquidity restored," the programs should expire, "as Congress intended and the law requires," Toomey said in a statement Thursday.

The Fed's intervention into corporate bond markets was particularly effective, staving off a massive wave of bankruptcies. But the government support also stoked record amount of issuance and ultra-low rates, resulting in worries that credit markets were overheating and taking too much risk.

While investors had expected the buying program to continue well into next year, market watchers were relatively sanguine about the demise — for now.

## **Bloomberg Economics**

By Saleha Mohsin and Catarina Saraiva

November 19, 2020, 1:29 PM PST Updated on November 19, 2020, 4:00 PM PST

— With assistance by Steve Matthews, Christopher Condon, Lisa Lee, and Joanna Ossinger

---

## **[The Treasury Is Asking the Fed for Its Money Back. Here's What It Means for Markets.](#)**

The Federal Reserve will likely be forced to close five pandemic facilities on Dec. 31 and return unused funds unless Congress acts. And while Wall Street watchers say the move could undermine confidence, markets had a muted response Friday.

Treasury Secretary Steven Mnuchin declined to extend the facilities in a late Thursday letter to Fed Chairman Jerome Powell, saying that they had done their job and highlighting that much of their capacity remains unused. What's more, he said, the only facilities slated to close are those financed with Treasury funding appropriated by Congress in the Cares Act. Mnuchin asked the Fed to return unused funds and extend the four programs that don't have that funding.

The Fed, for its part, came out with a statement saying that it "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy."

Markets' responses were muted on Friday. The S&P 500 was down 0.3%, while the iShares iBoxx \$ Investment Grade Corporate Bond exchange-traded fund was down 0.3% and the iShares iBoxx \$ High Yield Corporate Bond ETF (HYG) was down 0.2%. And the iShares National Muni Bond ETF

(MUB) gained 0.1%.

Still, many Wall Street strategists appear to agree with the Fed.

“While the amount of debt purchased so far isn’t necessarily significant relative to the size of the market, we view the signaling of the purchases as important as the purchases themselves,” strategists at CreditSights wrote in a Nov. 20 note.

They were writing on investment-grade debt, but strategists in other markets have echoed the sentiment.

“US credit markets will have to get through the winter months in which the surging new wave of the virus and exhaustion of savings from prior fiscal stimulus threaten a loss of economic momentum without a Fed backstop, though with support from vaccine prospects,” Evercore ISA economists Krishna Guha and Ernie Tedeschi wrote in a Nov. 19 note. “Mnuchin’s move will tighten financial conditions and removes a safety net for markets at the wrong moment.”

Vikram Rai, a municipal-market strategist with Citigroup, wrote in a late October note that the “Municipal Liquidity Facility (MLF) MUST be extended beyond year-end 2020.”

To get a more detailed idea of the implications of the facilities’ closings, it may help to run down what specific facilities are expiring, the markets they were created to support, and their uptake:

### **The Primary- and Secondary-Market Corporate Credit Facilities:**

These two vehicles were created to buy up to \$750 billion in corporations’ bonds, either directly or indirectly through exchange-traded funds. In the primary market facility, the Fed could buy four-year bonds directly from companies. In the secondary market facility it bought up to five-year maturity bonds that companies have already issued, with their selections based on a broad-based investment-grade market index. The secondary-market facility also bought corporate bond ETFs.

While the Fed hadn’t bought any bonds in the primary-market facility, it owned \$4.8 billion of bonds and \$8.6 billion of ETFs in its secondary-market facility, totaling more than \$13 billion.

That is a relatively small sum compared to the maximum \$750 billion purchase amount, not to mention the overall size of the \$9.6 trillion corporate bond market. Yet corporate bond markets across the quality scale have recovered to their pre-pandemic levels. According to ICE Indexes data, investment-grade bonds are yielding 1.9%, down from 4.7% at the height of March’s selloff, and high-yield bonds are yielding slightly less than 5%, down from their 11% pandemic peak.

### **The Term Asset-Backed Securities Loan Facility, or TALF:**

This facility was created to support the market for securities backed by loans, specifically: credit-card loans, automobile loans, student loans, certain types of business and insurance loans, and leveraged loans.

As of Oct. 31, the Fed had lent out \$3.7 billion of cash with the TALF, in the form of three-year loans with AAA-rated asset-backed securities as collateral. The asset-backed securities market is about \$1.7 trillion, according to the Securities Industry and Financial Markets Association, or Sifma, though a significant amount of those loans are backed by commercial mortgage-backed securities, which are included in the \$10.3 trillion mortgage market.

In his letter to the Fed, Mnuchin highlighted steep declines in consumer-loan-backed security yields

since the pandemic, indicating a rebound in prices—for both AAA- and A-rated securities. Credit-card asset-backed security yields are only slightly higher than pre-pandemic levels, as are auto loans.

### **The Main Street Lending Program:**

This bundle of facilities was meant to help small-to-midsize businesses and nonprofits access cash. The program—five facilities all managed under a common umbrella—was created to purchase a large proportion of new or expanded loans of at least \$100,000 from these entities' lenders. The facilities were created to purchase five-year loans with deferred principal and interest payments.

As of Oct. 31, the MSLP had purchased \$4.2 billion of loans, from 419 businesses across the U.S. and one nonprofit. In his letter to the Fed, Mnuchin said that the financial system can now provide credit to businesses, citing a National Federation of Independent Business survey that found only 2% of small and medium-sized firms reported that they had unsatisfied borrowing needs.

### **The Municipal Liquidity Facility:**

This facility was created to lend directly to state and local governments, but was one of the most controversial programs in the Fed's stable, as market participants said its costs were prohibitively high—even after a reduction—and strategists said the Fed didn't want to get too involved with a market that it saw as more Congress's area of focus.

The Metropolitan Transportation Authority and the state of Illinois have used the facility, as the MTA grapples with cratering revenues and Illinois' recent budget trouble threatens the state's credit rating. The MTA has borrowed \$450.7 million from the MLF and plans to borrow an additional \$2.9 billion by the end of this year, while Illinois has borrowed \$1.2 billion.

Even so, the broader municipal market hasn't taken the coming expiration too hard yet, as mentioned above. The worst of the pandemic-related trouble has so far been experienced by regions with high population densities and/or tourism revenues, such as New York and Hawaii, or among issuers that were struggling already with structural deficits. And many of the most embattled issuers say they would rather have grants than loans.

Still, with a divided government likely after January's runoff elections the question of federal aid is still up in the air. And UBS strategist Tom McLoughlin told Barron's in an interview last week that he believes there could be an uptick in the number of municipalities using the MLF in coming weeks if they believe it will soon expire.

In his letter, Mnuchin cited recent months' declines in municipal bond yields as evidence of the facility's success, even though that market hasn't recovered as strongly as corporate debt markets have.

And broadly, the programs' success appear to be a major reason that Mnuchin feels comfortable shutting them down.

But it is not yet clear how markets will fare this winter, with surging coronavirus case counts and a divided government that looks likely to persist into the new administration in January.

Even so, there is another reason that investors don't seem pessimistic about the facilities' closing at the moment: The possibility that the closing of the facilities will prompt more fiscal support from Congress. In an interview with CNBC on Friday morning, Mnuchin said that fiscal support is a more important factor in coming months, and said he would be working with Congress on Friday to attempt to push forward a deal.

“With lockdowns increasing, though hopefully mitigated by COVID vaccines in the coming months, now is a perfect time to get at least a [small] deal done,” wrote Academy Securities strategist Peter Tchir in a Friday note. “So maybe Mnuchin has figured out a way to get the money out directly or is betting that this forces the hand of Congress. I think this might be what the economists who are harshly criticizing this move are missing.”

## **Barron's**

By Alexandra Scaggs

Nov. 20, 2020 12:31 pm ET

---

### **Biden Needs to Fix Mnuchin's Big Mistake.**

#### **The president-elect must safeguard the Fed's lifeline for companies and municipalities.**

U.S. Treasury Secretary Steven Mnuchin has just put the country's financial stability at unnecessary risk, by refusing to extend programs that've kept credit flowing to companies and municipalities amid a severe economic crisis. It's now up to President-elect Joe Biden and the Federal Reserve to correct what could prove to be a costly mistake.

At issue are several emergency lending facilities, set up to address a severe credit freeze that accompanied the onset of the coronavirus pandemic in March and April. With \$195 billion in backing from the Treasury, the Federal Reserve made about \$2 trillion available to small businesses, corporations, and state and local governments, ensuring that they'd have access to the funds they needed to meet their obligations. The mere presence of such a formidable backstop emboldened lenders, making private credit widely available on excellent terms. As a result, the Fed's facilities have gone largely unused. For the most part, this is a sign that they're doing their job, providing the confidence needed for markets to operate on their own.

Now, however, Mnuchin wants to shut them down. In a letter to Fed Chairman Jerome Powell, he said he intends to withhold the approval needed to extend the programs beyond Dec. 31, and asked the Fed to return the capital that the Treasury has committed. His rationale is that he's acting according to the requirements of the Cares Act, that markets' thorough recovery makes removing the backstop completely safe, and that the money could better be used for direct grants.

He's wrong on all counts. When the programs were created, the clear intent was to extend them as long as necessary, just as the Fed did with its emergency lending facilities during the 2008 financial crisis. They remain necessary: With Covid-19 resurgent across the country, the economic outlook darkening, and Congress making no progress on added fiscal relief, it would be profoundly irresponsible to remove the one remaining lifeline that companies and municipalities have. And while direct grants are undoubtedly needed, that's a separate subject: The Treasury's capital is a commitment that it will eventually recoup, and it in no way prevents Congress from allocating funds for grants. It's hard not to see Mnuchin's decision as politically motivated, designed to undermine the incoming administration.

Together, Biden and the Fed can set things straight. The president-elect should affirm that after taking office in January, he'll direct his Treasury secretary to grant the approval that Mnuchin has refused. As long as the central bank doesn't return the Treasury's capital, the Fed should be able to revive the facilities. It's less than ideal, but the knowledge that help is on the way should be enough

to get markets through what's turning out to be a difficult presidential transition.

## **Bloomberg Opinion**

By Editorial Board

November 20, 2020, 7:30 AM PST

---

### **Steven Mnuchin's Finest Hour.**

#### **The Treasury chief decides to end Fed emergency programs as Congress intended.**

The late, great Milton Friedman used to say that nothing is so permanent as a temporary government program. That's one of many reasons taxpayers should thank Treasury Secretary Steven Mnuchin for moving to end most of the Federal Reserve's special pandemic lending facilities on Dec. 31 as Congress intended.

This isn't popular at the Fed, which likes its growing ability to allocate credit and please politicians with loans to their allies. It also won't go down well on most of Wall Street, which loves the Fed backstops. And Democrats are unhappy because they want a long-term call on the Fed for their own political ends.

But Mr. Mnuchin has acted in the best interests of the economy and the federal fisc, and the facts of the financial markets and politics explain why. Specifically, Mr. Mnuchin asked Mr. Powell in a letter Thursday to end the facilities that the Fed stood up with money under the March Cares Act. This includes the state and municipal lending program, primary and secondary corporate credit facilities, the Main Street facility for businesses, and the program for asset-backed securities.

All of these programs were created in an emergency at the onset of the pandemic when the financial markets were in danger of melting down. The Fed also stood up facilities, without Cares Act money, for commercial paper, money-market funds, and primary dealer credit.

The programs worked. Even as the pandemic and government shutdowns have waxed and waned, financial markets have healed. Lending spreads have fallen, and liquidity is ample in nearly all markets.

The facilities worked even without the Fed doing much lending. Their existence alone helped restore confidence. Treasury provided some \$195 billion in Cares Act cash to backstop the facilities. But the Fed has made only \$25 billion in loans or funding for other assets. Small and large businesses have ample access to credit, and so do cities and states.

Democrats are squawking about the Municipal Liquidity Facility going away, but so far it has made only two loans: one to the sorry state of Illinois for \$1.2 billion and one to New York's Metropolitan Transportation Authority for \$450 million. New Jersey considered the Fed facility, but this week it floated \$3.7 billion in bonds paying 1.95% in the private markets and the offer was oversubscribed. If even a deadbeat like Trenton can tap the private markets, there's no need for the Fed to do the lending.

Mr. Mnuchin has also asked the Fed to return \$455 billion in unused Cares Act funding to the Treasury. That money will sit in the general fund and Congress can reappropriate it for other uses. It

could pay for a new Covid relief bill if Speaker Nancy Pelosi ever agrees to compromise. Or it could be used to reduce the deficit (we can dream).

None of this means the Fed is out of ammo. Mr. Mnuchin has extended for 90 days four Fed facilities that were set up with pre-Cares Act money in Treasury's Exchange Stabilization Fund (ESF). That includes the commercial paper and money-market programs. The ESF also retains some \$80 billion, and \$50 billion of that could quickly be used to leverage as much as \$500 billion in lending if need be. The Fed will also retain \$25 billion in its facilities that it could use to leverage another \$250 billion.

The Fed issued a statement on Thursday griping about Mr. Mnuchin's decision, which proves the secretary's point. Chairman Powell is behaving like a politician these days, opining on fiscal policy that is not part of his mandate. But it would be an abuse of his authority and a rejection of Congressional intent if he refuses to return the \$455 billion to Treasury.

He'd essentially be saying that any money handed to the Fed in an emergency is the Fed's to use for whatever purpose and for as long as the central bank wants. This would be an unprecedented intrusion into fiscal policy. And it would make Congress understandably reluctant to hand more money to the Fed in the future. Senators Mike Crapo and Pat Toomey, who negotiated the Cares Act language in detail, issued statements Thursday supporting Congress's intent to terminate the emergency programs on Dec. 31. Late Friday Mr. Powell replied in a letter to Mr. Mnuchin that the Fed will work with the Treasury to return the money.

The termination is also important to limit the demands by politicians to use the Fed for policies they can't get through Congress. Four Senators, including Minority Leader Chuck Schumer, wrote Messrs. Powell and Mnuchin this month urging that the Fed programs be expanded. Democrats want the Fed to bail out states, invest in public works, add climate mandates and promote racial justice. The U.S. economy doesn't need more politicized credit.

Political actors rarely cede power or money they've received in emergencies, and thus do temporary programs become permanent. Mr. Mnuchin has done a public service in breaking that pattern, and Mr. Powell will as well if he follows that good example.

## **The Wall Street Journal**

By The Editorial Board

Updated Nov. 20, 2020 6:08 pm ET

---

### **[Letter from Chair Powell to Secretary Mnuchin Regarding Emergency Lending Facilities.](#)**

Dear Mr. Secretary,

Like you, I am pleased with all that we have accomplished together this year. We rapidly put in place emergency lending facilities to support state and local governments, small and medium-sized businesses, and large employers. These were novel and complex programs that required us to work productively together. Our efforts helped to prevent severe disruptions in the financial system and unlocked trillions of dollars of private lending to households, businesses, and municipalities at a moment when the economy needed it most.

The CARES Act assigns the Treasury Secretary sole authority to make certain investments in Federal Reserve emergency lending facilities, subject to limits specified in the statute. You have indicated that the limits on your authority do not permit the CARES Act facilities to make new loans or purchase new assets after December 31, 2020, and you have requested that we return Treasury's excess capital in the CARES Act facilities. We will work out arrangements with you for returning the unused portions of the funds allocated to the CARES Act facilities in connection with their year-end termination.

As you noted in your letter, non-CARES Act funds remain in the Exchange Stabilization Fund and are, as always, available, to the extent permitted by law, to capitalize any Federal Reserve lending facilities that are needed to maintain financial stability and support the economy.

November 20, 2020

---

## **Mnuchin-Powell Split Shows Rare Discord as Economy Struggles.**

- **Treasury secretary, Fed chair typically work in lockstep**
- **Investors will look to whether Mnuchin successor renews**

The top two U.S. economic policymakers clashed over whether to preserve emergency lending programs designed to shore up the economy — a rare moment of discord as the nation confronts the risk of a renewed downturn spurred by the resurgent coronavirus.

The disagreement erupted late Thursday when outgoing Treasury Secretary Steven Mnuchin released a letter to Federal Reserve Chair Jerome Powell demanding the return of money the government provides the central bank so it can lend to certain markets in times of stress. Minutes later, the Fed issued a statement urging that “the full suite” of measures be maintained into 2021.

“This is a significant and disturbing breach at a critical time for the economy,” said Tony Fratto, who worked at the Treasury and the White House during the George W. Bush administration. “We need all the arms of government working together and instead we’re seeing a complete breakdown,” he said, noting that Washington remains at an impasse on fiscal stimulus as well.

Investor reaction to the split was swift amid fears the decision will unsettle markets and impede the economic recovery: futures on the S&P 500 Index were down 0.5% in early Friday trading in Europe, with haven demand sending Treasuries higher and pulling down yields.

Treasury chiefs and Fed chairs typically coordinate closely at times of crisis, appearing jointly before Congress and working in lockstep to ensure funding markets run smoothly. The two agencies were tightly linked in the bailouts of the financial and auto industry more than a decade ago. And they united again in the March 2020 Cares Act economic rescue package, which appropriated cash for the government to finance Fed backstops for everything from municipal to corporate finance after markets buckled when the pandemic hit.

Now, Mnuchin wants some of the money back, arguing many markets are no longer at risk of seizing up and so don’t need further aid beyond next month. In his sights are facilities which sought to ease corporate credit and municipal-borrowing and also offered loans to small and medium-sized businesses. He asked that four other programs be kept in place for an additional 90 days.

“Financial conditions are quite strong,” Mnuchin said in an interview. “The good news is, the

markets have recovered significantly,” he said. Companies don’t need more loans, and instead require more grant money, which requires action from Congress, he said.

The Fed has argued that the lack of take-up for some of the programs is a sign they’ve worked.

Mnuchin said that the purpose of his announcement was not to put the Treasury against the Fed, and that he was merely carrying out the law prescribed by the Cares Act. The facilities could be re-activated if needed with either congressional support or with other funds available to the Treasury, he said.

“It appears the Fed may be reading the legislation differently,” said Michael Feroli, chief U.S. economist at JPMorgan Chase & Co.

The risk is that divisions between the key economic players undermines confidence at a time when growth is flagging. Fed Bank of Dallas President Robert Kaplan said on Bloomberg TV Thursday that there’s the potential for gross domestic product to shrink this quarter and even next.

The economy is also set to go without fiscal stimulus: Republicans and Democrats remain deadlocked on a new package, and measures including extended unemployment benefits are set to expire next month.

“I was a bit surprised” at the Treasury’s statement, Raphael Bostic, president of the Fed Bank of Atlanta, told Bloomberg TV. “Given where the economy is — and there’s so much uncertainty still out there — it’s prudent to keep those things open so that when people, if they do have stress, they can draw upon it.”

Among the initiatives that will now no longer be able to extend new credit are two Fed facilities that allowed it to buy corporate bonds for the first time. They helped to unfreeze that market, even before the effort was up and running, and businesses have since logged record amounts of debt issuance.

Another, the Main Street Lending Program, has had a slow start, and the Fed recently loosened its terms to help encourage banks and smaller businesses to participate.

Powell himself said at a virtual conference on Tuesday that the time to discontinue the lending facilities was “not soon,” highlighting that typically the central bank keeps its backstops in place for some time after a crisis hits. He has repeatedly praised the Cares Act for what he’s described as “essential” support amid the historic collapse in GDP in the spring.

The U.S. Chamber of Commerce called for a reconsideration of Mnuchin’s decision.

“We strongly urge these programs be extended for the foreseeable future and call on Congress to pass additional pandemic relief targeted at the American businesses, workers and industries that continue to suffer,” the chamber said in a statement.

The sunset of some of the facilities may now build expectations for the Fed to take some other policy action when it wraps its next meeting on Dec. 16. Feroli was among those already anticipating that the central bank could tweak its main asset-purchase program by skewing it toward longer-dated securities.

President-elect Joe Biden’s administration could seek to renew the facilities, or press Congress to authorize fresh funding for them, when it takes office in January. Biden said Thursday that he’s made a decision on who he will nominate as Treasury secretary. Republicans in Congress have said

the billions of dollars sent to the central bank can be deployed better elsewhere.

Biden's Treasury could agree to restart the facilities, as Mnuchin pointed to, using the Exchange Stabilization Fund.

That could be one reason why credit markets may not immediately respond to the Treasury's move, said Ellen Zentner, chief U.S. economist at Morgan Stanley. Plans by cruise operator Carnival Corp. to sell debt without collateral will test the strength of the market in the meantime.

"If the only implication is you're going to have a three-to-four week disruption until a new Treasury secretary is confirmed, then credit investors won't look to sell" for now, Zentner said on Bloomberg TV. The key will be to see whether that renewal will be forthcoming, she said.

## **Bloomberg Politics**

By Chris Anstey and Saleha Mohsin

November 19, 2020, 8:04 PM PST Updated on November 20, 2020, 5:14 AM PST

— *With assistance by Kathleen Hays*

---

### **Municipal CUSIP Request Volume Continues to Surge.**

NEW YORK, Nov. 16, 2020 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for October 2020. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant surge in municipal request volume for the second straight month, while corporate volumes declined throughout the U.S. and Canada.

CUSIP identifier requests for U.S. corporate debt declined 9.2% in October, while requests for new U.S. equity identifiers fell 4.9% and Canadian requests were down 8.7% versus last month's totals. On a year-over-year basis, corporate CUSIP requests are up 12.2%.

Municipal requests climbed in October. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – surged 31.8% versus September totals. On an annualized basis, municipal CUSIP identifier request volumes were up 15.4% through October. On a state-by-state basis, issuers in Texas requested 300 new municipal identifiers in October, followed by California with 175 and New York with 148.

"The real story in this month's data comes from the municipal market, where issuers have really ramped up access to debt markets," said Gerard Faulkner, Director of Operations for CGS. "In Texas alone we saw 300 identifier requests for new municipal debt issues this month. It's clear that the combination of low rates and increasing funding needs is creating a recipe for increased municipal market activity."

Requests for international equity and debt CUSIPs were mixed in October. International equity CUSIP requests were down 13.8% versus September. International debt CUSIPs increased 5.9% on a monthly basis. Syndicated loan requests were up 38.0% on a monthly basis and down 28.2% year over year.

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

---

## **Agencies Provide Temporary Relief to Community Banking Organizations.**

The federal bank regulatory agencies on Friday announced an interim final rule that provides temporary relief for certain community banking organizations related to certain regulations and reporting requirements as a result, in large part, of their growth in size from the coronavirus response.

Community banking organizations are subject to different rules and requirements based on their risk profile and asset size. Due to participating in federal coronavirus response programs—such as the Paycheck Protection Program—and other lending that supports the U.S. economy, many community banking organizations have experienced rapid and unexpected increases in their sizes, which are generally expected to be temporary. The temporary increase in size could subject community banking organizations to new regulations or reporting requirements.

With regard to the requirements covered by the interim final rule, community banking organizations that have crossed a relevant threshold generally will have until 2022 to either reduce their size, or to prepare for new regulatory and reporting standards. The rule applies to community banking organizations financial institutions with less than \$10 billion in total assets as of December 31, 2019. Community banking organizations with under \$10 billion in assets may have fewer resources available to prepare and comply with previously unanticipated regulatory requirements, especially during a time of economic disruption.

The rule will be effective immediately upon publication in the Federal Register, and comments will be accepted for 60 days after publication in the Federal Register.

[Federal Register notice: Temporary Asset Thresholds \(PDF\)](#)

November 20, 2020

---

## **IRS Releases UBTI Calculation Regs for Exempt Orgs.**

Treasury and the IRS have released final regulations on calculating the unrelated business taxable income of tax-exempt organizations.

The final regs ([T.D. 9933](#)) issued November 19 address section 512(a)(6), a Tax Cuts and Jobs Act provision that requires exempt organizations with more than one unrelated trade or business to calculate UBTI separately for each one. The regs provide guidelines for identifying separate UBTI and explain when EOs can treat investment activities as one unrelated trade or business when computing UBTI.

The final guidance adopted some clarifications provided in the proposed regs ([REG-106864-18](#)) without change. Those clarifications involve the section 513(b) definition of unrelated trade or business applying to individual retirement accounts and the inclusions of subpart F and global intangible low-taxed income being treated in the same manner as dividends when determining UBTI.

---

## **UBTI Calculation Regs Reflect Public Input.**

Guidance from the IRS and Treasury to help tax-exempt organizations calculate unrelated business taxable income if they have more than one unrelated trade or business adopts many suggestions offered in public comments.

The final regulations (T.D. 9933), released November 19 ahead of official publication in the Federal Register, address section 512(a)(6), a Tax Cuts and Jobs Act provision that requires exempt organizations with multiple unrelated trades or businesses — silos — to calculate UBTI separately for each one.

The final regs explain how an EO can determine if it has more than one unrelated trade or business and, if it does, how to calculate its UBTI.

“The IRS should be commended for its speedy efforts in issuing final guidance on 512(a)(6), along with their level of consideration given to the 17 comments submitted in response to the proposed regulations,” Meghan R. Biss of Caplin & Drysdale Chtd. told Tax Notes.

The preamble to the final regs discusses reducing the administrative burden on organizations and the IRS by adopting bright-line rules, Biss noted.

“In doing so, I believe that the IRS is taking into account how it will enforce these rules,” Biss said. “To me, the rejection of facts and circumstances is an indication that they want agents to avoid the enforcement difficulties posed in other EO areas that rely solely on a facts and circumstances test.”

### **NAICS Codes**

The final regs retain the proposed regs’ (REG-106864-18) provision requiring an EO to identify each of its separate unrelated trades or businesses by using the first two digits of the North American Industry Classification System (NAICS) code that most accurately describes the unrelated trade or business.

The determination is based on the more specific NAICS code that describes the organization’s activity, and the descriptions in the current NAICS manual of trades or businesses using more than two digits of the NAICS codes are relevant in making that determination, according to the preamble.

In response to comments, the final rulemaking incorporates a NAICS rule for identifying particular industries and provides that when there are sales of goods both online and in shops, the separate unrelated trade or business is identified by the goods sold in shops if the same goods generally are sold online and in stores.

If an EO concludes that its trade or business activities would be most accurately described by different NAICS two-digit codes, the activities should be identified that way and treated as separate unrelated trades or businesses, according to the final regs.

Like the proposed rulemaking, the final regs say the NAICS two-digit code has to identify the separate unrelated trade or business in which the EO directly or indirectly engages. It may not describe activities substantially related to accomplishing the organization’s exempt purpose.

The final regs, in response to comments, eliminate the restriction on changing NAICS two-digit codes. An organization that changes the identification of a separate unrelated trade or business must report the modification in the tax year of the change in accordance with forms and instructions.

## **IRAs, Subpart F Income**

The final regs adopt the proposed rulemaking's clarification that the definition of unrelated trade or business applies to IRAs.

Likewise, the proposed regs' clarification that inclusions of subpart F income and global intangible low-taxed income are treated the same way as dividends for purposes of determining UBTI is retained in the final rulemaking.

## **Net Operating Losses**

An EO with more than one unrelated trade or business will determine the net operating loss deduction separately for each of its unrelated trades or businesses, according to the final regs. They also provide that reg. section 1.512(b)-1(e), which addresses the application of section 172 in the context of UBIT, applies separately for each such unrelated trade or business.

The final regs say an organization with losses in a tax year beginning before January 1, 2018, and in a tax year starting after December 31, 2017, will deduct its pre-2018 NOLs from total UBTI before deducting any post-2017 NOLs regarding a separate unrelated trade or business against the UBTI from such trade or business. The IRS and Treasury rejected a commentator's request to permit an EO to choose the order in which it uses pre-2018 and post-2017 NOLs based on its own facts and circumstances.

The final regs clarify that pre-2018 NOLs are taken against the total UBTI in a way that allows for maximum use of post-2017 NOLs, rather than pre-2018 NOLs, in a tax year.

"For example, the final regulations further clarify that an exempt organization may allocate all of its pre-2018 NOLs to one of its separate unrelated trades or businesses or it may allocate its pre-2018 NOLs ratably among its separate unrelated trades or businesses, whichever results in the greater utilization of the post-2017 NOLs in that taxable year," the preamble explains.

The final rulemaking also provides that after offsetting any gain from terminating, selling, exchanging, or otherwise disposing of a separate unrelated trade or business, any remaining NOL is suspended.

But the suspended NOLs may be used if the previous separate unrelated trade or business later resumes or if a new unrelated trade or business that is accurately identified using the same NAICS two-digit code as the previous separate unrelated trade or business begins or is acquired in a future tax year, according to the preamble.

In response to six commentators, the final regs provide that for purposes of section 512(a)(6), a separate unrelated trade or business that changes identification is treated as if the originally identified separate unrelated trade or business is terminated and a new separate unrelated trade or business begins.

Therefore, none of the NOLs from the previously identified separate unrelated trade or business will be carried over to the newly identified separate unrelated trade or business, the preamble explains.

The change in identification may apply to all or a part of the originally identified separate unrelated trade or business. If the change applies to the originally identified separate trade or business entirely, any NOLs attributable to that separate unrelated trade or business are suspended, the final regs say.

If the change in identification applies to the originally identified separate unrelated trade or business in part, the originally identified separate unrelated trade or business that remains

unchanged keeps the entire NOLs attributable to it, including the part for which the identification is changing.

### **Investment Activities**

Despite pleas from some commentators, the final regs, like the proposed version, treat an EO's investment activities that are subject to UBIT as a separate unrelated trade or business for purposes of section 512(a)(6).

Regarding specified payments from controlled entities, the IRS and Treasury adopted the language in the proposed regs without change, rejecting the suggestion that all specified payments be treated as one unrelated trade or business for purposes of section 512(a)(6).

### **Qualified Partnership Interest**

The final regs rejected commentators' recommendations of alternative or additional methods for identifying a qualified partnership interest (QPI).

The rulemaking adopts the proposed regs' position that once an organization designates a partnership interest as a QPI, it can't subsequently identify the trades or businesses conducted by the partnership that are unrelated trades or businesses regarding the EO using NAICS two-digit codes unless and until the partnership interest stops being a QPI.

In response to a commentator, the final regulations clarify that if an organization whose interest must be considered when determining the EO's percentage interest for purposes of the first prong of the control test is a general partner in a partnership in which an EO holds an interest, that interest is not a QPI.

Regarding the first prong of the control test, the final regs keep the 20 percent capital interest threshold of the proposed regs. However, they make clear that the EO must satisfy the percentage interest requirement for its tax year with which or in which the partnership's tax year concludes.

TAX ANALYSTS

by FRED STOKELD

POSTED ON NOV. 20, 2020

---

## **[Regulator Joint Statement Highlights Need to Move on from LIBOR \(But For Some, Not Necessarily to SOFR\) - McGuireWoods](#)**

On November 6, 2020, Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") issued a joint [Statement on Reference Rates for Loans](#) (the "Joint Statement").

**The Takeaway:** You don't have to go to SOFR, but you can't stay here. The Agencies expect banks to include fallback language in existing LIBOR loan contracts and "begin transitioning loans away from LIBOR without delay," but recognize that the "use of SOFR is voluntary" and that a more credit sensitive alternative may be more appropriate for some banks. Although the Agencies have recognized the desire by some banks for a more credit-sensitive alternative to SOFR as a replacement for LIBOR, they have also been clear that they won't be recommending any particular

credit sensitive alternative, in contrast to the ARRC's recommendation of SOFR. The Agencies note that "[b]anks should assess the appropriateness of alternative reference rates in light of their funding costs and their customers' needs." So while money center banks and syndications markets continue to trend towards SOFR, the Agencies have made clear that banks in other market segments have regulatory leeway to continue to evaluate other options and alternatives.

But why might SOFR not fit all shapes and sizes?

### **Stress Test:**

The Joint Statement foregrounds an ongoing undercurrent of discussions by some banks focused on potential issues with SOFR as an index rate in times of economic stress. In a September 23, 2019 [letter to the Agencies](#), a group of banks highlighted the squeeze that many banks would feel during times of economic stress with a portfolio of SOFR indexed loans:

- LIBOR is an unsecured credit sensitive rate, so that in times of economic distress, as the cost of funds for banks rise, the yield on banks' portfolio of LIBOR indexed loans also rises; thus, with LIBOR indexed loans, bank lending and borrowing rates tend to move in concert; HOWEVER
- SOFR is a secured nearly "risk free rate" (overnight rate for borrowing secured by U.S. Treasury securities), and as such during times of economic distress, "SOFR (unlike LIBOR) will likely decrease disproportionately relative to other market rates as investors seek the safe haven of U.S. Treasury securities."

With a portfolio of SOFR based loans, banks will bear the risk that in times of economic distress, their cost of funds will go up but interest income will go down, squeezing banks' net interest income. The tendency of borrowers to draw down credit lines and hoard cash during economic crisis amplifies the potential problem.

### **Credit Sensitivity Group:**

The Agencies responded to that letter by organizing a Credit Sensitivity Group ("CSG"), which conducted four workshops over the summer (June 4, 2020, July 22, 2020, August 12, 2020 and August 27, 2020) to vet and discuss the issue, summaries of which can be found [here](#). Additional working sessions are scheduled for November 18, 2020 and a TBD December date to continue discussions around developing a credit sensitive component to help address the disconnect between SOFR and bank cost of funds under conditions of economic distress. However, in a [public letter](#) from the Agencies on October 21, 2020 and in advance of the next CSG working sessions, the Agencies made clear that "the official sector does not plan to convene a group to recommend a specific credit-sensitive supplement or rate for use in commercial lending products."

### **Challenges to Credit Sensitivity / "Dynamic" Spreads:**

Constructing a "dynamic" adjustment to SOFR to account for ongoing changes in credit quality was weighed by the ARRC early on, but discarded in favor of the currently recommended "static" spread adjustment added to SOFR to approximate LIBOR (i.e., a spread determined and fixed at the point in time that LIBOR is discontinued). In electing to go with a static spread adjustment, the ARRC recognized that dynamic spread adjustment formulations suffer many of the same IOSCO compliance problems as LIBOR itself: (a) limited transactions in normal times that could be used to calculate the spread adjustments, (b) even more limited transactions in periods of stress and (c) an unstable sample of firms that borrow in unsecured wholesale markets, resulting in borrower-based variability. Nevertheless, market participants continue to explore ways mitigate the risks posed by SOFR movement during economic stress.

As the clock winds down on LIBOR, ISDA rolls out its [IBOR Benchmark Fallback Protocols](#) for swaps and the syndicated loan market moves toward [hardwired fallbacks to SOFR](#), the demand by some banks for a more credit-sensitive alternative to LIBOR continues to generate both discussion and recognition by the Agencies.

By Donald A. Ensing & Susan Rodriguez on November 18, 2020

**McGuireWoods LLP**

---

## **[The Transition Out of LIBOR: What State and Local Governments Should be Discussing with Their Financing Teams](#)**

The London Interbank Offered Rate (LIBOR) is a global benchmark interest rate calculated daily, and is the most widely used benchmark in the capital markets. State and local governments often see this rate in swaps/derivatives products intertwined with municipal debt, as well as in floating rate notes, lease contracts, bank loans, direct placements, and other types of financings and credit enhancements.

**[LIBOR will be phased out over the rest of 2020 and on December 31, 2021, will cease publication.](#)** Therefore, state and local governments need to know that existing contracts that reference LIBOR will need to be revised to perform as intended and new contracts will have to reference a new benchmark, such as the [Secured Overnight Financing Rate \(SOFR\)](#).

The Federal Reserve along with the Federal Reserve of New York, has established a working group with GFOA and other stakeholder groups – the [Alternative Reference Rates Committee \(ARRC\)](#) – to ensure a transition for the financial markets from LIBOR to a new rate, the Secured Overnight Financing Rate (SOFR). In some cases, state and local governments may see other rates used for some financing products.

To help governments best understand and address these changes, below are a list of questions that you should discuss with your financing team to ensure that as new benchmark rates take hold, these changes do not trigger rate revisions or other provisions that cause a financial disruption to the government/government entity.

### **Questions Issuers Should Ask Internal and External Finance Team**

#### **Does my jurisdiction have any LIBOR exposure?**

Review contracts to identify contract terms and what exposure the government has with the impending change in the reference rate, LIBOR. Identify entity's outstanding/legacy financial products that may be predicated on the LIBOR rate:

- Swaps/derivatives
- Floating rate notes
- Bank loans
- Direct placements
- Letters of credit
- Purchasing cards
- Lease Contracts
- Investment Products, including Guaranteed Investment Products (GICs)

## **What do I do if I find LIBOR referenced?**

Discuss with finance team – including counsel, swap advisor, and municipal advisor – the changes that may need to occur in these legacy contracts. Most swap/derivatives contracts are based on the standard terms contained in the [International Swaps and Derivatives Association \(ISDA\) Master Agreement](#) and related documents. The ISDA Master also contains a [Fallback Protocol](#), which was recently revised and released on October 23, 2020. Discussing the new protocol with your Qualified Independent Representative (QIR) and your financing team is essential for your governmental entity. Members are encouraged to adhere to the protocol to modify contracts to reflect the change from LIBOR to SOFR or other rate using the ISDA LIBOR Fallbacks Protocol. NOTE that the fallback protocol includes a provision for ISDA to issue a “cutoff date.” Failure to adhere in a timely manner will result in unnecessary complications.

In bank loans and direct placements, discuss with the bank/counterparty the replacement rate that will be used for these contracts and request to review with the bank/counterparty any financial penalties that could occur.

Governments may also have investments that are tied to LIBOR rates. Members should review investments and discuss any that do reference LIBOR with your financing team, including investment adviser.

## **What else should I think about if I find LIBOR referenced and need to make changes to my contract?**

If approval from a governing body is needed to make changes with the contract, allow enough lead-time to have the contract reviewed and suggested changes made by members of the finance team to the governing body for approval.

## **How do I report the transition from LIBOR on my financial statements?**

Identify any accounting matters, such as [GASB 93](#) that need to be addressed when making changes to the contract and the reference rate. Governments should address these and other accounting and financial reporting implications that result from the replacement of an IBOR.

## **Is this a material event that should be disclosed?**

Discuss with bond counsel/disclosure counsel if contract changes trigger a material event filing or if the entity should submit a voluntary disclosure filing in EMMA regarding contract changes away from LIBOR.

## **What else should I ask if the exposure originates back over a decade?**

Some contracts may be in place that pre-date the passage of the Dodd Frank Act in 2010 that now requires, under [Commodity Futures Trading Commission \(CFTC\) rules](#), that state and local governments and entities to use a [Qualified Independent Representative \(QIR\)/Swap Advisor](#) when engaging in derivative products. Governments need to have a QIR in place to assist them with some legacy transactions if changes are made, and for any new swap transactions.

## **Should I engage any professional particularly suited to assist?**

When discussing derivative and swap transactions with the entity’s municipal advisor, ensure that the municipal advisor is qualified and understands the breadth of this market. Governments may need to engage the services of a swap advisor (QIR) to assist them with these transactions, which

could be a different party than the entity's municipal advisor.

While the Department of the Treasury and IRS has provided guidance that changing LIBOR to SOFR in a financing does not constitute a new bond issuance, governments should discuss contract changes with bond counsel/tax counsel to address tax integration matters and ensure there are no federal tax compliance concerns.

### **What should I do if my entity will be engaging in a transaction within the next year?**

When looking to engage in NEW swaps/derivatives, floating rate note transactions, bank loans or direct placements, discuss with your financing team and counterparties what reference rate will be used in the contract. Governments are advised to NOT accept continued use of LIBOR in new contracts, which could trigger the need for changes after 2021 and with that, possible additional fees.

### **Government Finance Officers of America**

---

## **[IRS PLR: City's Geographic Boundaries Constitute Qualified Service Area](#)**

The IRS ruled that the entire geographic area of a city is a qualified service area of its public utilities commission within the meaning of section 141(d)(3)(B)(i) but expressed no opinion on whether the interest on bonds used to finance the city's plan to provide retail electric service will be tax-exempt.

[Read the IRS Private Letter Ruling.](#)

Citations: LTR 202046004

---

## **[IRS PLR: Renewable Energy Facility Is Not Public Utility Property](#)**

The IRS ruled that the portion of a public utility's photovoltaic array built on a customer's land that is the dedicated renewable energy facility serving that customer will not be public utility property within the meaning of section 168(i)(10) and former section 46(f)(5).

[Read the IRS Private Letter Ruling.](#)

Citations: LTR 202047004

---

## **[Stakeholders Expect Next DOT Secretary to Have a Muni Edge.](#)**

Municipal bond market participants want the next U.S. Secretary of Transportation to have more issuer experience and understand the inner workings of the muni bond market.

Many candidates on the table for the next Secretary of Transportation have experience as issuer officials or as legislators dealing with tax issues, which gives localities some comfort.

"When you look at a potential new transportation secretary who has issued general obligation debt or any other creative structures to make infrastructure, rail and roads happen in their region, it's satisfying because we won't have to start from square one when talking about the market and instead you're starting from square three and you're moving forward and beyond," said Emily Brock, director of the Government Finance Officers Association's federal liaison center.

Multiple media outlets have reported Los Angeles Mayor Eric Garcetti, Rep. Earl Blumenauer, D-., and former Chicago Mayor Rahm Emanuel as top contenders for the post.

They bring something new to the table, Brock said.

Biden could announce his pick in the next few weeks. President Trump has not conceded electoral defeat, though the Associated Press and other organizations have declared Biden the presumptive winner.

Current Secretary Elaine Chao was appointed by President Trump in 2016 and was the U.S. Secretary of Labor from 2001 to 2009. Though she does have a significant transportation background, the potential for local leaders to have experience in issuing general obligations is helpful, Brock said.

Blumenauer can be a strong advocate for municipal bonds if picked by President-elect Joe Biden. He was a county commissioner and member of the Portland City Council before being elected as a congressman in 1996. He is currently a member of the House Ways and Means Committee. He also was on the House Transportation and Infrastructure Committee for almost 10 years.

"(Blumenauer) has been a longtime supporter of bonds, from Plain Jane vanilla bonds to private activity bonds," Brock said. "So he understands the different tools in the tool kit. That would be incredibly useful. On the other hand, someone like Garcetti or Rahm could understand conceivably the GO and how it's used and specifically with regards to transportation."

Biden plans to invest \$1.3 trillion dollars over the next 10 years in infrastructure, with a heavy stated focus on resiliency.

"Every federal dollar spent on rebuilding our infrastructure during the Biden Administration will be used to prevent, reduce, and withstand the impacts of this climate crisis," according to Biden's plan. "If we transform our modes of transportation and the sources of energy that power them, we can make real progress toward reducing our greenhouse gas emissions."

Brock expects partnerships between local and federal governments to achieve those climate initiative goals.

Marion Gee, finance director at the Metropolitan St. Louis Sewer District and GFOA president, wants to see proposals for grant funding to help localities build resilient infrastructure.

"It will be difficult from a municipalities' stance to do these projects on a standalone basis, so they're going to need federal support to build those kinds of projects," Gee said.

Gee hopes that the next transportation secretary will be an advocate for reinstating tax-exempt advance refunding to help fund future infrastructure projects. Tax-exempt advance refunding was taken away during the 2017 Tax Cuts and Jobs Act.

Last week, the Public Finance Network released a report on the benefits of tax-exempt advance refunding. The National Association of Counties, a PFN member, said pandemic effects on counties?

finances would be helped by bringing back advance refunding. NACo plans to work with the next Congress on that issue.

“As described in this new resource, reinstating advance refunding of municipal bonds would improve state and local governments’ ability to invest in critical infrastructure projects, such as hospitals and other health facilities, schools, roads, bridges, water and sewer systems ports, airports and other public works,” NACo said on Monday.

NACo Associate Legislative Director Jessica Jennings wants the next transportation secretary to understand the role counties play in national transportation, adding that counties directly support 78% of public transit and 45% of public roads.

“That’s obviously a huge stake in the national system so having a secretary that understands that and realizes how important the local level is and what we’re doing is really what we need,” Jennings said. Jennings wants direct funding from the U.S. DOT instead of state DOTs.

Jennings also wants to see a fix to the depleted Highway Trust Fund. Biden has said he plans to stabilize it and ensure new revenues, according to his infrastructure plan.

The HTF is in need of funds as it runs mostly on gas taxes while also receiving money from Treasury general funds under existing legislation. Shortfalls in the funds have been filled by transfers totaling \$144 billion since 2008, according to the Peter G. Peterson Foundation, a non-partisan research organization.

Highway, transit and airport grant programs run by the U.S. DOT is often used as seed money for issuers and can be leveraged with bond proceeds in order to raise money for infrastructure projects, said Michael Decker senior vice president of policy and research at Bond Dealers of America.

“It’s important that the secretary is committed to those programs, that they are committed to the success and proliferation of those programs and there are going to be opportunities under the next administration to expand some of the transportation-related initiatives that already exist,” Decker said.

One of those programs is the Transportation Infrastructure Finance and Innovation Act, which provides long-term, low-interest loans and other types of credit assistance for constructing surface transportation projects.

In July, Rep. John Garamendi, D-Calif., introduced the TIFIA for Airports Act. In 2019, Sens. Tammy Duckworth, D-Ill., and David Perdue, R-Ga., released a similar bill.

The next secretary could be a leader in expanding TIFIA, Decker said.

Other initiatives on the table are municipal provisions in the House’s Moving Forward Act. The House passed its infrastructure bill, which was folded into the larger Moving Forward Act in July 2020. That bill includes a series of taxable direct-pay bonds and a restoration of tax-exempt advance refunding.

“There are a lot of initiatives on the table in the context of the transportation bill where Congress’ action could be really helpful and I hope that the next Secretary of Transportation would be an advocate for those kinds of changes,” Decker said.

The National Association of State Treasurers is also hopeful the next secretary will be a strong federal partner.

“States need the tried and true tools to continue financing the lion’s share of America’s infrastructure, but we also need a stronger federal partner and additional federal funding in the mix if we are ever truly going to tackle our infrastructure deficit,” said Brian Egan, NAST’s policy director.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11/17/20 01:44 PM EST

---

## **Public Infrastructure/Private Service Model For 21st Century Broadband Proves Worthy.**

The emerging model presents a scalable option for communities that lack the expertise or interest to operate networks or act as ISPs themselves but want to own and control the core communications assets in their communities as a means of securing the benefits of broadband internet. Here’s a look at the model’s business case, technical elements and risks.

Broadband networks rank among the most important infrastructure assets of our time – for purposes of economic development and competitiveness, innovation, workforce preparedness, health care, education, and environmental sustainability. The criticality of broadband was illustrated when the COVID-19 pandemic shut down the U.S. economy. Households with fast connections were able to continue working and attending classes online. Unconnected households found themselves more cut off than ever.

If there was ever any doubt about the centrality of broadband to the national interest, the devastating pandemic erased this doubt. Yet the United States faces persistent gaps in broadband availability and affordability – as well as a troublingly noncompetitive broadband ecosystem in which most communities are served by only one or, at best, two high-speed broadband providers.

[Continue reading.](#)

### **Broadband Communities**

By Joanne Hovis, Jim Baller, David Talbot and Cat Blake

November/December 2020

---

## **EPA Receives 67 New Requests for WIFIA Financing.**

**This year’s requests - totaling over \$9 billion - are the largest ever for the program.**

The U.S. Environmental Protection Agency (EPA) has received 67 letters of interest in response to the agency’s 2020 Water Infrastructure Finance and Innovation Act (WIFIA) Notice of Funding Availability. A total of \$9.2 billion was requested this year—the largest amount ever requested through the WIFIA program.

“These letters show the incredible interest in the financial support that the WIFIA program provides to communities that are upgrading their water infrastructure,” said EPA Administrator Andrew

Wheeler.

Consistent with the agency's 2020 appropriation, EPA is offering approximately \$5 billion in WIFIA loans to help finance more than \$10 billion in water infrastructure projects. The agency received letters of interest from prospective borrowers located in 24 states, including six states that are seeking WIFIA loans for the first time. With these letters of interest, borrowers in 41 states, plus the District of Columbia and Guam, have requested WIFIA loans. Since the program began in 2017, EPA has received requests totaling over \$30 billion. Since closing the first loan in 2018, EPA has closed 40 WIFIA loans that are providing \$7.7 billion in credit assistance to help finance \$16.6 billion for water infrastructure while creating more than 38,200 jobs and saving ratepayers \$3.6 billion.

The 2020 letters of interest cover a wide variety of water infrastructure needs, including reducing lead and emerging contaminants and supporting wastewater management, drinking water quality, desalination, stormwater management, and combined approaches. Prospective borrowers include municipal government agencies—such as four small communities—corporations, and public-private partnerships. As the next step in this competitive process, EPA will evaluate the letters for project eligibility, creditworthiness, engineering feasibility, and alignment with WIFIA's statutory and regulatory selection criteria. This winter, the agency will identify projects it intends to finance and invite those selected entities to submit formal applications.

EPA's WIFIA program continues to provide financial support at a critical time as the federal government, EPA, and the water sector work to help mitigate the public health and financial impacts of COVID-19. Since March 2020, WIFIA has announced 24 loans and updated seven existing loans with lower interest rates. These recent announcements will save ratepayers over \$1.5 billion.

## **WaterWorld**

Nov 19th, 2020

---

### **[Ready or Not, 5G is Coming: Governments Need To Be Prepared Today.](#)**

**5G will revolutionize government operations. State and local governments must start preparing for it now to ensure they can maximize its benefits.**

The implementation of 5G wireless and broadband protocol technology around the world is well underway. Before the coronavirus pandemic, approximately 45% of the world's population was slated to have access to 5G-enabled technology by 2024. While the pandemic has decelerated the rate of 5G growth, leading developers of 5G technological equipment, backed by the federal government, are ramping up spending and deployment to meet a sharply increased demand for faster and better internet speed connections.

5G is enterprise-focused, technologically unmatched and geared toward empowering businesses, consumers and governments in ways unimaginable. It will bring enormous benefits to local governments to expand and leverage digital connectivity. For example, 5G will deliver wireless broadband speeds of up 100 times faster than 4G LTE, meaning that governments adequately prepared for it can expect 5G to make their digital operations run much more smoothly and efficiently.

Similarly, energy providers will be able to analyze consumer energy use to make it more efficient, internet of things devices can identify issues with home appliances, vehicles, traffic flow, weather,

flight patterns and so on. By some estimates, 5G could spur \$13.2 trillion in economic activity by 2035. For local governments, that could lead to major increases in revenue, both from the application and renewal fees for 5G infrastructure devices (30,000 5G units for a 100,000 population city could mean up to more than \$8 million in new, annual renewed right-of-way fees alone) and from the tax revenue generated by new industries and businesses.

But it won't be easy for governments to get the most out of 5G without proper understanding and compliance with federal law. If they don't start preparing now to adopt, place, deploy and monitor compliance with federal laws they will find themselves quickly and easily overwhelmed by the significant policy and operational challenges required to build for the 5G future.

The stakes of successfully making the switch to 5G are monumental. State and local governments can't afford to be passive. The problem, however, is that reaping the benefits of 5G will require local governments to tackle several difficult policy and operational challenges.

First, 5G will substantially increase the administrative and management workload for local governments. Most of America's 5G hardware has yet to be built and deployed (despite the commercial ads). With the coronavirus pandemic already elevating the workload and stretching the public sector labor force and localities' tax bases to the breaking point, cities and counties could easily be overwhelmed by the influx of administrative work generated by 5G implementation and possibly miss out on the revenues.

Governments can start preparing for the massive workload and administrative demands from 5G by streamlining their operations, automating their internal processes and upgrading their technology infrastructure to manage renewal fee revenues for system upgrades for regulatory compliance. With the right internal systems in place, governments will find they have the flexibility and efficiency to handle whatever 5G will throw at them. Public-private partnerships could certainly help with this, and governments may want to consider bringing in private sector vendors to help them.

Another challenge related to 5G is the enormous amounts of data that will be created. Governments will have to make hard decisions about how much data they will collect and how they will maintain and protect it. Retaining large amounts of data will dramatically increase the potential harms associated with a data breach. It doesn't matter whether that data is stored on a device or in the cloud, larger data stores present a more attractive target for data thieves. But thieves cannot steal data that has either been deleted after serving its purpose, properly secured or not even collected in the first place. That's why governments need to plan how they will prioritize, organize and potentially minimize the data they collect from their 5G-enabled jurisdictions and cities.

5G has the potential to usher in a new era of tech-savvy, data-driven governance. Governments should take the initiative to capitalize on these innovations and lean into the challenges so that they are best positioned to benefit from the impending 5G transformation. 5G is coming, and in many instances, already here. It's up to state and local governments to be ready for it.

## **Route Fifty**

By Jonathan Gerth

NOVEMBER 20, 2020

*Jonathan Gerth is vice president of tax and audit services at Avenu Insights & Analytics.*

---

## **IRS Attacks Impact Investing With Flawed Logic: A Critical Review of the IRS Argument**

On October 9th, the Internal Revenue Service released Private Letter Ruling 202041009 (the “Ruling”), which, in what many in the nonprofit community would have expected to be a relatively straightforward exemption approval for a new 501(c)(3) nonprofit organization (the “Nonprofit”), resulted in not just a denial of the Nonprofit’s tax-exempt status, but, in some respects, a repudiation of impact investing as a whole, including program related investments (PRIs). While private letter rulings are only legally binding on the taxpayer that requested the ruling (in this case, the Nonprofit), these rulings are used by practitioners as a guide to IRS’s position on the application of the tax law. Thus, a negative IRS ruling is generally viewed as a warning to all others in similar circumstances. All is not necessarily lost for the Nonprofit in the Ruling. The Nonprofit still has a variety of options to consider taking to continue its fight, which the authors of this article hope it will vigorously do. As the goal of this article is not to review all of the legal strategies one could take in the exemption process, we note that there are various options so readers know that this story may not be over.

### **Ruling Overview**

The Ruling was prompted by the Nonprofit seeking a Determination Letter from IRS confirming that it qualifies for exemption as an organization described in Section 501(c)(3) of the Internal Revenue Code. According to the Ruling (which is heavily redacted to preserve the confidentiality of the actual applicant), the Nonprofit was formed: Exclusively for charitable purposes, including, for such purposes, increasing the capital available to organizations that develop and/or operate (i) long term affordable housing for the economically and physically disadvantaged, (ii) community facilities such as schools and community health centers, (iii) businesses providing access to healthy foods, (iv) sustainable energy projects, (v) commercial real estate, and (vi) other projects that may increase social welfare.

The exempt purpose of the Nonprofit, more generally, is to “deploy capital into projects that promote a social good and that otherwise struggle to find financing in normal capital markets” in low income and underserved communities. Capital for the Nonprofit’s work comes from impact investors, specifically in the form of equity investments in pooled investment funds organized by the Nonprofit. The Ruling describes impact investors as “individuals and institutions who want to see that their funds accomplish positive social and environmental objectives and as a concomitant objective to earn financial returns and utilize capital to finance projects and organizations in line with the investors’ dual objectives”. While we recognize there are many different views on how to define an impact investor, this is the version used in the Ruling. Unlike many determination requests from applicants in the exemption process, the Nonprofit had already begun conducting activities prior to making its request for an IRS determination. Thus, the Ruling provides actual examples of activities undertaken by the Nonprofit, namely two funds that were already organized. The first was a loan fund focusing on preventative healthcare and social service investments in an effort to reduce costly acute care interventions. The initial projects included the provision of housing and social services for the chronically homeless and for individuals exiting incarceration to reduce recidivism and the prison population. The second loan fund targeted small-scale energy efficiency and clean energy project finance. In this case, initial projects included efficiency upgrades in non-profit affordable housing units and at a non-profit senior living facility. Both projects focused on lowering operating and utility costs. The Ruling describes the funds’ projects as “not commercially financeable”. In fact, in characterizing all of the investments made to date by the Nonprofit, the Ruling states:

These kinds of activities are not well supported by traditional capital markets. The activities are too niche, too small scale, or too low-return to draw the attention and resources of banks, venture capital and private equity funds, and public stock and bond markets.

The Ruling also describes, in brief detail, the manner in which the Nonprofit selects projects for investment, which includes both somewhat traditional investment due diligence considering both risk and return, as well as social and environmental impact screens. In order for the Nonprofit to become sustainable it charges a “substantially below market” management fee for its services to the investment funds it manages. To the extent the Nonprofit earns any funds in excess of its costs, which it endeavors to keep low by sharing space and services with its parent organization 501(c)(3) nonprofit organization, such excess is either invested into one or more of the funds or contributed to its parent. Some other facts describing the Nonprofit’s activities include that: (a) it will likely be required to register with the Securities and Exchange Commission (SEC) as an investment advisor at some point, (b) no guarantees are made to investors that they will receive a “fair market return”, (c) “as of a couple of years ago” the Nonprofit was already managing assets, (d) no charitable deductions are offered to investors in the Nonprofit’s funds, despite the Nonprofit’s management activities being conducted in furtherance of its charitable mission, and (e) the Nonprofit’s model is projected to be successful, with substantial excess revenue over expenses by its third year of operations. Questionable Application of Legal Precedent In reviewing the law governing qualification for exemption in the Ruling, IRS relies on a variety of Treasury Regulations articulating both the “organizational test” and the “operational test”.

The former requires that an organization be organized in a manner that qualifies for exemption; in other words, the governing documents must meet the literal requirements for exemption. The latter test, being the more complex of the two, requires that the organization engage primarily in activities that accomplish one or more of the organization’s exempt purposes. The Ruling then proceeds to recite a series of Revenue Rulings from the late 1960s through the mid-1970s, as well as a number of court cases dating back to 1945. After analyzing the precedent, IRS ultimately determined that the Nonprofit fails to qualify for tax-exempt status because it fails to satisfy the operational test for exemption, more specifically, that a substantial portion of the Nonprofit’s activities consists of managing funds for a fee that provide a market or near-market return for investors. In other words, more than an insubstantial amount of the Nonprofit’s activities further non-exempt purposes. As IRS characterizes the Nonprofit’s activities, the funds are open to any interested investors who expect market or near-market returns while also capitalizing on activities with a public purpose. Ultimately, IRS believes the Nonprofit’s “charitable objectives or results are incidental to [its] business purposes of maximizing returns for [its] investors.” While some of the authority underlying the IRS conclusion is on point, a number of the citations referenced may best be described as misguided or, at worst, far from applicable to the Nonprofit’s activities. For example, IRS compares the Nonprofit to an organization denied exemption in Revenue Ruling 69-528, where the organization provided investment services for a fee to other nonprofits in a manner similar to what is considered an unrelated trade or business when operated by a nonprofit organization. In contrast, the Nonprofit charged below-market fees for investments not made in common stocks, but in specifically curated projects that not only advance the Nonprofit’s exempt purposes but that would not otherwise be funded without the Nonprofit’s actions. IRS seemingly ignores the fact that the Nonprofit’s purposes were advanced by its investment in those projects, which were charitable. IRS similarly cites Revenue Ruling 72-369 for the proposition that offering services at cost is not enough to qualify an activity as charitable.

However, the Nonprofit is not providing general managerial and consulting services at cost like the organization in Revenue Ruling 72-369, but is rather providing below-market rates for its investment services as part of a package meant to increase the desirability of investment in exempt purpose

projects that would not be funded otherwise. Again, these are projects that were otherwise not commercially financeable. In Revenue Ruling 74-587, a nonprofit invests in economically depressed areas with loans tailored to business needs based on a primary goal of advancing charitable goals, as opposed to amassing profit. While some individuals and businesses receiving financial assistance from the organization may not qualify for charitable assistance, they are “merely instruments” in effectuating the organization’s exempt purposes. IRS contrasts this organization with the Nonprofit, stating that because the Nonprofit screens potential investments for both financial feasibility/risk and social/environmental impact, as well as charging fees and benefitting investors, the Nonprofit is primarily concerned with the rate of return. On the other hand, the Nonprofit will only invest if the exempt purposes screen is met, so the assertion that the Nonprofit’s investments are “first and foremost concerned with the risk and return potential” seems an unfair characterization based simply on the order of operations of the Nonprofit’s vetting methodology; IRS said form counts more than substance. Additionally, the activities of the organization in Revenue Ruling 74-587 are not without private benefit (to the individuals/businesses). There is no indication the loans are interest-free and there clearly is no requirement that the recipients qualify for charitable assistance.

The cases cited by IRS in the Ruling highlight the impact of the commerciality doctrine on the exemption analysis, which is somewhat murky in practice but basically equates to the fact that substantial commercial activity, as defined based on all relevant facts and circumstances, must be in furtherance of a nonprofit’s exempt purposes in order to be acceptable. Various court cases over time have enumerated different facts and circumstances to be weighed, but a few commonly cited examples include whether the activity competes with for-profit enterprises, as well as how the activity is priced, advertised and funded. IRS believes the Nonprofit’s activities are like those typically operated by commercial ventures, with funding solely from management fees and resulting in a high financial reserve advising against a finding of exemption. However, a comparison to *B.S.W. Group, Inc. v Commissioner*, 70 T.C. 352 (1978), for example, is not directly on point as the Nonprofit is not offering consulting services for high fees, but instead charges below-market rates and eschews a carried interest typical of fund managers, all designed to not generate a profit for the Nonprofit. It is operating to provide investments that otherwise are not offered in the market because they could not attract capital, even if there is the potential for market or near market returns. The lack of competition is, in a way, the reason the Nonprofit created the funds in the first place and is the basis of its exempt purpose. Other cases are cited by IRS, including *Airlie Foundation v. Commissioner* (283 F. Supp 2d 58 (D.D.C., 2003) and *Living Faith, Inc. v. Commissioner*, 950 F.2d 365 (7th Cir. 1991), in order to continue the competition argument, as well as to point to revenue from investment fees (as opposed to donations) and a projected high financial reserve as counseling against exemption. However, the Nonprofit invests any reserve back into its exempt projects or donates the funds to its parent 501(c)(3) organization. Additionally, based on the facts provided in the Ruling, it is a bit of a stretch to compare the Nonprofit’s “promotional efforts,” described as a publicly available brochure and offering documents accompanying the private funds that would be required by securities laws, with the wide-spread advertising and “commercial catch phrases” used to promote the restaurants and health food stores run by Living Faith, Inc.

Ultimately, the facts and circumstances of the Nonprofit’s activities do not fit neatly with the precedents cited by IRS, which means there seems to be a significant basis for challenging the legal foundation for the position taken by IRS to deny the Nonprofit’s exemption.

## **Tensions with Established Impact Investing Practices**

In addition to applying flawed logic to the facts as presented, the Ruling seems to indicate a discomfort with the very types of activities that drive impact investing, including program-related investments (PRIs) made by private foundations. The Ruling provides a definition of impact investing

that highlights dual objectives of positive social and/or environmental good and financial returns, such that the investment is not exclusively about generating profit. Nonprofits have long engaged in impact investing, sometimes termed “mission related investments (MRIs)” and IRS has declined to penalize nonprofit organizations for investments made with a charitable mission in mind that may offer lower returns than standard investment alternatives. The tax law explicitly blesses PRIs, on the other hand, with private foundations authorized to treat amounts expended in connection with PRIs as part of their required 5% minimum distribution requirements and without being considered imprudent from an investment perspective. The Treasury Regulations define PRIs as investments characterized by a primary purpose to advance exempt purposes, without a significant purpose of production of income or appreciation of property. The actual production of significant income or appreciation, however, is not, in and of itself, considered evidence of a significant purpose involving the production of income. In fact, an investment is considered to be made primarily to accomplish exempt purposes if it significantly furthers the accomplishment of the nonprofit organization’s exempt activities and if the investment would not have been made but for such relationship between the investment and the accomplishment of the exempt activities. A relevant consideration is whether investors solely focused on profit would make the investment on the same terms.

The Ruling stands in stark tension with PRIs and the larger impact investing environment, as the PRI criteria seem to directly echo the facts in the Ruling. The Nonprofit created “not commercially financeable” funds in furtherance of its exempt purposes, as typical capital markets were not an option due to the “niche,” “small-scale,” and “low-return” nature of the investments. In short, the investments further the Nonprofit’s purposes and would not have been made but for the Nonprofit’s efforts. While the Nonprofit was able to provide market or near-market returns to its investors, in the PRI context, the mere creation of profit is not enough to villainize the investment itself. IRS makes much of the Nonprofit’s cost-saving efforts, which again, are not enough to make profit the primary motive. Similarly, evaluating potential investments for both risk and social impact does not automatically mean a PRI is not in furtherance of exempt purposes, nor should the assumption be made about the Nonprofit’s activities simply because the possibility of a return is considered. While the investors in the Nonprofit’s funds may have entertained any number of reasons for investing in the Nonprofit’s projects, the Nonprofit offers no promises or expectations to investors about market returns and focuses instead on furthering its exempt purposes in innovative ways. Additionally, there is no requirement that a PRI, or for that matter, charitable activities, only benefit a recipient that would otherwise qualify for charitable assistance, though IRS cites this as a reason against exemption. Lastly, as noted, PRIs are not considered to have a primary profit motive simply because they happen to be a good investment with market or near-market returns. Characterizing the Nonprofit’s activities as “trying to secure the highest returns possible for your clients” misses the greater context in which the Nonprofit is operating, namely in a space where projects in furtherance of exempt social and environmental purposes would not otherwise get done. IRS is also uneasy about the fact that investors, including the general public as opposed to simply exempt organizations, can (and are) benefitting from the Nonprofit’s investments. However, in the PRI context, the private enterprises that receive support are most certainly benefitted, but so are exempt purposes furthered. On the other hand, PRI returns are required to be recycled by the investing private foundation for charitable purposes. Perhaps the decision in the Ruling would have come out differently had the Nonprofit’s management activities been funded through donations as opposed to below-market fees, but the arguments made by IRS strain against the backdrop of established PRI regulations.

The Ruling may result in the curbing of creative fundraising of third-party dollars by nonprofit organizations striving to provide much-needed capital for exempt-purpose facilities and services when facing a dearth of traditional funding options. One of many dangers with this approach is a reduced ability for nonprofits to court or work with outside funding that is not a charitable donation, grant or loan, which, in turn, will reduce the probability that many difficult-to-fund projects with

immense social good will ever be started. While IRS may have legitimate arguments in favor of such restrictions, the reasoning provided in the Ruling is not altogether convincing.

Thursday, October 22, 2020

© **Polsinelli PC, Polsinelli LLP in California**

---

## **Treasury Releases Priority Guidance Plan.**

On November 17, 2020, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) announced the release of the 2020-2021 Priority Guidance Plan. The 2020-2021 Priority Guidance Plan sets forth guidance priorities for the Treasury and the IRS. Each year, the Treasury Department's Office of Tax Policy and the IRS use the Guidance Priority List to identify and prioritize tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The Guidance Priority List focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law.

You can find the 2020-2021 priority guidance plan [here](#).

---

## **TAX - OHIO**

### **Athens v. McClain**

**Supreme Court of Ohio - November 5, 2020 - N.E.3d - 2020 WL 6494232 - 2020 -Ohio- 5146**

Municipalities brought action against Tax Commissioner challenging constitutionality of statutes governing state collection and administration of municipal net profit taxes.

The Court of Common Pleas entered judgment for Tax Commissioner. Municipalities appealed. The Court of Appeals affirmed. Municipalities appealed.

The Supreme Court held that:

- General Assembly's authority to limit municipal power to levy taxes includes administrative acts that the enactment requires;
- General Assembly acted within its authority when it enacted centralized administration system for municipal net profit taxes;
- Statute providing for state's retention of a one-half percent of municipal net profits taxes as part of centralized administration exceeded General Assembly's authority; and
- The unconstitutional retention provision could be severed.

General Assembly acted within its authority when it enacted centralized administration system for municipal net profit taxes; laws did not take over a municipality's own internal operations but instead made administration of municipal net profit tax, for those taxpayers that elected centralized administration, an operation of the state tax department, with the state thereby becoming a fiduciary for the municipalities whose taxes it collected.

Statute directing State Treasurer to retain one-half percent of municipal net profit taxes for collection and administration services, as part of centralized administration, rather crediting amount to fund that distributed funds to municipalities, exceeded General Assembly's general power to legislate, since municipalities exercising home-rule authority were not persons "subject to" the state's regulation.

---

## **Prepared Leaders Make Effective Policy: GFOA's Elected Officials Guide Series Introduction**

**December 1, 2020 | 1 p.m.-2:15 p.m. ET**

### **Details:**

Prepared Leaders Make Effective Policy: GFOA's Elected Officials Guide Series Introduction  
Thriving communities can often trace their good fortune to excellent management of public finance. Leaders who understand the fundamentals of public finance are better prepared to make informed policy, enabling communities and their local government to reach their full potential. Bridging the communication gap between elected officials and the public finance officers that advise them allows for efficient processes and clear expectations. GFOA's Elected Officials Guide series will help familiarize readers with essential concepts of public finance by detailing real examples and highlighting the topics most valuable when understood. This seminar introduces the series and offers an in-depth overview of Understanding the Fiscal Health of Your Community, while previewing subsequent books in the Elected Officials Guide series.

### **Learning Objectives:**

Introduce GFOA's Elected Officials Guide Series

Cover topics and concepts from Understanding the Fiscal Health of Your Community including:

- o Financial Statements
- o Fund Balances
- o Revenue Forecasting
- o Regulatory Agencies
- o Budgeting Basics

Attendees should leave with a basic foundation for literacy of public finance concepts and terms. This would include: understanding the differences in balances (governmental, proprietary, fiduciary), knowledge of significant regulatory bodies, grasping fundamentals of multiple budgeting methods.

**Member Price:** Free

**Non-member Price:** Free

[Register.](#)

---

## **NFMA Introduction to Municipal Bond Webinar Series.**

Each year since 1987, the NFMA has held the Introduction to Municipal Bond Credit Analysis.

Though the pandemic prevents us from holding this event in person this year, we have invited speakers to discuss ten topics over a series of ten one-hour sessions. This course is designed for new analysts, support and sales personnel, and has also been found worthwhile for seasoned analysts seeking to brush up on other sectors.

All sessions will begin at Noon Eastern, and last approximately one hour. Registrants may attend the live session and/or watch the replay until February 1, 2021.

To view the list of sessions (all included with registration), [click here](#).

To register one individual, [click here](#).

To register up to five individuals from the same firm, [click here](#).

---

## **[Still See Continual Inflows Into Muni Market: Kazatsky \(Radio\)](#)**

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, on the health of the muni market. Hosted by Paul Sweeney and Vonnie Quinn.

[Listen to audio.](#)

### **Bloomberg Radio**

November 20, 2020 — 10:26 AM PST

---

## **[HY Munis Worth A Look Vs. HY Corporate Credit Right Now.](#)**

### **Summary**

- “High-yield” tends to be associated with corporate credit in investor income portfolios. However, the high-yield/unrated municipal sector is also worth a look.
- We discuss some benefits of HY muni bond CEFs over their corporate analogues such as relative valuation, higher-quality fund portfolios, resilient leverage structures and more.
- We also highlight a number of funds that allocate to the space such as OIA, NMZ and NMCO.

[Continue reading.](#)

### **Seeking Alpha**

Nov. 21, 2020

---

## **[Supreme Court Ends Puerto Rico Bondholders’ Bid for Pension Assets.](#)**

The U.S. Supreme Court on Monday declined to review an appeals court ruling against a group of Puerto Rico bondholders seeking pension assets and a share of future revenue.

On Jan. 30, the 1st U.S. Circuit Court of Appeals in Boston upheld a June decision from the federal judge overseeing Puerto Rico's complex bankruptcy case that went in favor of the Employees Retirement System of the Government of Puerto Rico and the federal oversight board. The ruling dismissed arguments by ERS bondholders holding \$3 billion of ERS debt that they were entitled to some assets that existed when they bought the bonds as well as future pension contributions, which are now coming from general revenues.

The Financial Oversight and Management Board for Puerto Rico said at the time of the 1st Circuit ruling that it "clearly denies ERS creditors access to public pension contributions."

Seeking to have that decision overturned, the ERS creditors, including Andalusian Global Designated Activity Co., Glendon Opportunities Fund LP, Mason Capital Master Fund LP and several Oaktree Capital funds, argued in their petition that the 1st Circuit decision conflicted with other circuits, "thereby endangering secured lending and municipal finance."

## PENSIONS & INVESTMENTS

by HAZEL BRADFORD

November 16, 2020 03:37 PM

---

### [Financial Accounting Foundation Names Five New Members to the Board of Trustees.](#)

Norwalk, CT—November 17, 2020 — The Financial Accounting Foundation (FAF) Board of Trustees today announced the appointment of new Trustees Timothy L. Christen, Lynnette Kelly, Richard N. Reisig, Sarah E. Smith, and Robin L. Washington. All appointees' terms will begin January 1, 2021 and conclude on December 31, 2025.

The FAF is the parent organization of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

"Together with the Board of Trustees, I am pleased to welcome Tim, Lynnette, Rick, Sarah, and Robin," said FAF Chair Kathleen L. Casey. "Their varied backgrounds, experience, and skill sets will ensure a continued diversity of perspective, which is critical for the FAF in directing the appropriate stewardship of the FASB and GASB in carrying out their standard-setting missions."

The new appointees will fill vacancies left by retiring members Charles M. Allen, Christine M. Cumming, Eugene Flood Jr., Kenneth B. Robinson, and Diane M. Rubin whose terms conclude on December 31, 2020.

"On behalf of the FAF, I want to acknowledge the contributions of Chuck, Christine, Gene, Ken, and Diane and thank them for their dedication and service. I would like to also extend an additional note of appreciation to Christine for her service as secretary and treasurer and to Diane for her role as vice chair," noted Ms. Casey.

Below are brief biographical sketches of the appointees:

**Timothy L. Christen** is the Chairman of the Board of Baker Tilly International Ltd. He has over 30 years of experience in the public accounting profession including serving as Chairman of the AICPA.

Tim most recently served as Chairman and CEO of Baker Tilly US LLP, a role that he held between 1998 and 2016. He is currently serving as a member of several additional boards, including CPA.com, a subsidiary of the AICPA, where he serves as Chairman of the Compensation and Audit Committees, privately held Sub-Zero Group, and NYSE listed Mayville Engineering Company where he serves as Chairman of the Audit Committee and member of the Nominations and Governance Committee. He has also been recognized as one of the “100 Most Influential People in Accounting Profession” by Accounting Today and was included on the list of “Most Admired US Managing Partners” by Inside Public Accounting.

**Lynnette Kelly** is the former President and Chief Executive Officer of the Municipal Securities Rulemaking Board (MSRB). She has over 30 years of business, legal, regulatory, compliance, and technology experience in the fixed income markets. During her tenure at MSRB, she increased the level of transparency in the municipal securities market with her oversight of the launch of the MSRB’s Electronic Municipal Market Access (EMMA) website, which is the official source of municipal market data and documents. Ms. Kelly is NACD Directorship Certified and sits on the board for the University of Chicago Harris School of Public Policy Center for Municipal Finance and for Caretech Inc. Ms. Kelly is also involved with various charitable organizations that provide educational opportunities to disadvantaged students including the Bishop John T. Walker School for Boys, the CUES schools in Omaha, Nebraska, the Washington, D.C. Professional Enrichment Academy, and the Economic Club of Washington, D.C.

**Richard N. Reisig** is the Chief Executive Officer for Anderson ZurMuehlen & Company, P.C. He has over 38 years of experience as an auditor and consultant on accounting, tax, and financial reporting issues working for private companies, not-for-profits, and local governmental entities. He has had extensive involvement in standard-setting, including as a member of the FASB’s Private Company Council and in various leadership roles with the AICPA and National Association of State Boards of Accountancy (NASBA). He has served on the Montana Board of Public Accountants including two appointments as Chair. Mr. Reisig received the George D. Anderson Distinguished Service Award from the Montana Society of CPAs and was elected to leadership roles on various civic and community boards, including Special Olympics of Montana and for multiple entities for Montana State University. He currently serves as the at-large Director for the NASBA.

**Sarah E. Smith** is the former Chief Compliance Officer and Chief Accounting Officer for Goldman Sachs Group, Inc., where she currently serves as a Senior Advisor. She has over 40 years of experience in the accounting and auditing profession, including nearly 25 years with Goldman Sachs Group, where she was a long-term member of the Management Committee. She also served on several Goldman Sachs committees including the Reputational Risk Committee, Client and Business Standards Committee, Investment Policy Committee, Risk Committee, and the Steering Committee on Regulatory Reform. Ms. Smith is a member of the Institute of Chartered Accountants in England and Wales and attended City of London University.

**Robin L. Washington** is the former Executive Vice President and Chief Financial Officer for Gilead Sciences, Inc. She has over 30 years of experience as a preparer of financial statements, with wide-ranging experience across the healthcare and technology sectors. Ms. Washington currently serves on multiple corporate boards, including Alphabet Inc., the parent company of Google, Inc., Honeywell International Inc., and Salesforce.com. Ms. Washington also serves on multiple non-profit boards including the University of California, San Francisco Benioff Children’s Hospital of Oakland, the University of Michigan Presidents Council, and Ross Business School Advisory Board, as well as the Graziadio School of Business and Management at Pepperdine University.

A complete list of the Board of Trustee members can be found at [www.accountingfoundation.org/trustees](http://www.accountingfoundation.org/trustees).

---

## **The MTA Is Developing Plans to Cut Costs and Borrow From Fed. Its Bonds Have Rallied.**

The Metropolitan Transportation Authority next month will be discussing cutting service by up to 40 %, laying off thousands of workers and increasing fares, as it weighs options to offset sliding revenues from the pandemic.

Officials reiterated the need for federal funding at a Wednesday meeting, and said deep cuts to service and jobs will be necessary if Congress doesn't offer aid.

Yet the market seems to be taking a slightly less downbeat perspective than it was before. Yields on some MTA bonds have declined since the U.S. presidential election and news of a vaccine: A two-year bond yield, for example, was trading at 3.5% Tuesday, down from 4.6% on Nov. 6, according to Bloomberg data. Prices and yields move oppositely.

MTA officials have requested \$12 billion in grants from Washington, and forecast deficits of more than \$15 billion in the next three years without any steps to reduce that gap. The deficits will total about \$7 billion if the MTA takes deficit-reduction steps that aren't service or jobs cuts.

The four-year "worst case" budget plan introduced Wednesday reflects no deficit spending, though the state has recently passed a law that allows the MTA to borrow up to \$10 billion to cover pandemic-related costs in coming years.

To be sure, MTA bond yields are still well above their levels from the start of this year, when the two-year bond traded around 1.4%. The coronavirus pandemic prompted the yield to soar as high as 7.9% in March. Last week, subway ridership was down as much as 70% compared to similar days last year.

So the moderate decline in bond yields is likely the result of investor optimism about federal aid. Help from Congress likely won't arrive until at least next year, however, and the possibility of Republican control of the Senate may hamper the amount of aid received.

So to help fill this year's budget gap, MTA officials are working on an application to tap the Federal Reserve's Municipal Liquidity Facility for the maximum \$2.9 billion available. The process is under way, said Robert Foran, the MTA's chief financial officer, in Wednesday's board meeting. That should allow the MTA to access the facility by the end of this year.

The MTA's board will take action on its 2021 budget proposal at next month's meeting.

### **Barron's**

By Alexandra Scaggs

Nov. 18, 2020 1:37 pm ET

---

## **NASBO State Expenditure Report.**

This annual report examines spending in the functional areas of state budgets: elementary and secondary education, higher education, public assistance, Medicaid, corrections, transportation, and

all other. It also includes data on capital spending by program area, as well as information on general fund and transportation fund revenue collections.

### **Overview: Fiscal 2018-2020**

- Total state spending (including general funds, other state funds, bonds, and federal funds) grew 7.8 percent in estimated fiscal 2020.
- Federal funds are estimated to have increased 14.1 percent in fiscal 2020, the highest annual growth rate since the Great Recession. The sizeable increase in federal funds spending is largely due to additional federal aid states received in response to the COVID-19 pandemic, including the CARES ACT and increased FMAP.
- Spending from states' own funds (general funds and other state funds combined, excluding bonds) rose 5.1 percent in estimated fiscal 2020.
- The "all other" category saw the largest gain in total state spending in fiscal 2020, at 12.6 percent. Many of the top expenditure areas for CARES Act funds fall under the "all other" category including unemployment insurance, public health programs, housing assistance, emergency management, economic relief, aid to local governments, and broadband and other technology upgrades.
- State general fund revenue declined 0.8 percent in fiscal 2020, the first decline since the Great Recession. The revenue data in this report are based on estimates provided over the summer and are subject to change; NASBO's Fall Fiscal Survey of States, to be released in December, will provide preliminary actual data on general fund revenues for fiscal 2020.

[Download Summary.](#)

[Download Full Report.](#)

### **National Organization of State Budget Officers**

Staff Contact  
Brian Sigritz  
202-624-8439  
[bsigritz@nasbo.org](mailto:bsigritz@nasbo.org)

---

### **[Michigan Court of Claims Denies Request for Injunction Against State Over Local Licensing Decisions: Dykema Gossett](#)**

On November 11, 2020, Attitude Wellness D/B/A Lume Cannabis Company (Lume), filed suit in the Michigan Court of Claims against the Michigan Marijuana Regulatory Agency (MRA), the Village of Edwardsburg, and two private parties, after the Village denied Lume's application for village marijuana establishment licenses. Lume sought an injunction to prevent the MRA from issuing state licenses to the two businesses that won licenses from the Village. Last week, the Court of Claims denied that request, finding Lume's claims against MRA to be "speculative and inexact."

Under the state's adult-use law, the Michigan Regulation and Taxation of Marihuana Act (MRTMA), if the MRA is faced with more applications from a municipality than the number of establishments that the municipality allows, then the municipality is to select from among competing applications by a competitive process. That process must be intended to select the applicants who are best suited to operate in compliance with MRTMA. As permitted under MRTMA, the Village limited the number of

licenses for retail establishments, in this case to two, and chose from among the applicants.

In the Michigan Court of Claims, Lume alleged that the Village inappropriately selected Alvarez Cultivation (Alvarez) and NOBO Michigan (NOBO), in violation of MRTMA. Michigan's Court of Claims is a court of limited jurisdiction, which can only entertain claims against the State and its agencies. Lume argued that the MRA was the proper defendant and that MRA should be enjoined from awarding state licenses to Alvarez and NOBO because the Village failed to follow MRTMA's requirements with respect to competitive selections.

Lume's case illustrates the difficulty of succeeding in such challenges. Although MRTMA requires a municipality to select applicants by virtue of a competitive process aimed at ascertaining which are best suited to comply with the law, by its plain language MRTMA's requirement applies only in cases where MRA receives too many applications. But an MRA application is not complete without a municipal attestation that the applicant is in compliance with local ordinances. And municipalities generally will not provide such an attestation until applicants have been selected at the local level. As such, MRA does not face more applications than a municipality allows, because the municipality has already whittled the number down before the applicants come to MRA.

While the practicalities of the MRA licensing process and specific language of MRTMA has led to substantial debate as to whether and how a competitive process is truly required, Court of Claims Judge Michael J. Kelly issued an opinion in Lume's case last week that did not address this issue. Rather, Judge Kelly simply assumed that the MRTMA requirement was implicated here.

Nevertheless, Judge Kelly denied Lume's motion for an injunction. In doing so, he found that "the crux of plaintiff's allegations is against Edwardsburg and its decision to approve applications by Alvarez and NOBO." The Court further found that the few allegations levied against the MRA were "speculative and inexact" because they assumed that "Alvarez and/or NOBO will receive licensure—first local licensure and then state licensure." And Alvarez and NOBO apparently had not yet even applied for licensure from MRA.

Even though the MRA was the only state-actor named in the complaint, none of the defendants were dismissed. While the Court of Claims has no jurisdiction over non-state actors, Judge Kelly stated in a footnote that "the Court has jurisdiction over the only defendant against whom it has been asked to grant relief—the MRA—at least for purposes of the instant motions." Given that, "while the court questions whether it has jurisdiction over the non-state actors, it will not sua sponte dismiss them at this time, as doing so is unnecessary for resolving the currently pending motions." But this is a fundamental problem for aggrieved applicants who wish to sue the MRA and municipalities over a licensing fight—the Court of Claims lacks jurisdiction over non-state actors, yet the Circuit Court that has jurisdiction over the municipalities lacks jurisdiction over the MRA.

As this case moves forward, there may be further insight to gain.

**Dykema Gossett PLLC** – R. Lance Boldrey and Soujoud C. Hamade

November 23 2020

---

## **[Austin Voters Approve Tax Measure to Help Fund \\$7.1B Project Connect Plan: Nossaman](#)**

On November 3rd, Austin voters approved a property tax increase to help fund the \$7.1 billion

Project Connect mass transit project. The initial investment, which is a portion of the “Project Connect System Plan,” includes 27 miles of rail service, 31 stations and a transit tunnel. Specific elements of the plan include:

**Blue Line:** An approximately 15-mile light rail line running from Austin-Bergstrom International Airport (AUS), connecting through the downtown station and running north to Lamar Boulevard at Highway 183

**Orange Line:** A 21-mile light rail line running from North ...

[Continue reading.](#)

**Nossaman LLP**

By Patricia de la Peña on 11.19.2020

---

## **[BDA Policy Brief: Post Election Update on GSE Reform](#)**

[Fixed Income – Insights: BDA Policy Brief – Post Election Update on GSE Reform](#)

BOND DEALERS OF AMERICA

NOVEMBER 19, 2020

---

## **[BDA Washington Weekly: Lame Duck Session Begins](#)**

[Read the BDA Washington Weekly.](#)

**Bond Dealers of America**

November 20, 2020

---

## **[Event Recap: BDA 12th Annual National Fixed Income Conference](#)**

**Thank you to all attendees, sponsors, and exhibitors for helping make our 12th annual National Fixed Income Conference our strongest yet!**

**Please reach out with any questions or comments. We need your feedback to ensure we continue building a conference with the right topics and speakers — all focused on the U.S. fixed income markets. View the full agenda below and links to webinars.**

Over the span of two weeks November 5 – 13, 2020, the BDA held its 12th Annual National Fixed Income Conference virtually with ten sessions of fireside chats and panel sessions.

**Key highlights from the event include:**

- Over 330 registered attendees – fixed income leaders, representing all aspects of the markets,

regulators

- Over 75 firms represented from coast-to-coast
- Dozens of sponsors whose support helped to make this event possible
- Virtual exhibitor booth to represent firms sponsoring the event

### **November 5**

[Political Overview – What the National Elections Mean for the US Capital Markets](#) with Nathan Gonzales, Editor, and Publisher of Inside Elections with Nathan L. Gonzales & CNN Political Analyst

### **November 6**

[A New Day for Muni Market Regulation](#) with Mark Kim, CEO, MSRB

### **November 9**

[Life in the new normal: managing in the age of COVID and near-zero yields](#)

Panelists:

- Greg Bienstock, CEO & Co-Founder, Lumesis
- John Miller, Chief Administrative Officer & Head of Municipal Underwriting and Distribution, Piper Sandler
- SJ Guzzo, Managing Director, Debt Capital Markets, Duncan Williams
- John Reilly, Managing Director, Head of Taxable Fixed Income Trading, Wells Fargo Advisors
- Triet Nguyen, Vice President, Strategic Data Operations, DPC Data

[The Search for Relative Value Across Fixed Income Markets](#) with Spencer Lee of Agilon

### **November 10**

[Municipal Bond Issuance Expectations and Trends and Climate Change and the Municipal Bond Market](#)

Panelists:

- Matt Boles, Managing Director, Municipal Finance, Head Middle Markets Group, RBC Capital Markets
- Tim Coffin, Senior Vice President, Breckinridge Capital Advisors
- Lynn Martin, President, Fixed Income and Data Services, ICE
- Tom Doe, President, Municipal Market Analytics, Inc.
- Hector Negroni, CEO & CIO, FCO Advisors LP
- Bernard Bailey, Managing Director, Assured Guaranty

[Market Observations, Issuance Expectations and Their Focus on Counterparties, Whether Wall Street or Regional Dealer](#) with Randy Snook, CEO of the FHLB Office of Finance

### **November 12**

[Corporate and Government Bond Market Structure – Economic Turbulence, Stimulus, and the Fed Programs](#)

Panelists:

- Susan Estes, Founder, President & CEO, OpenDoor Trading
- Mark Watters, Co-Founder, and CCO, AxeTrading
- Chris Bruner, Managing Director and Head of U.S. Credit Product, Tradeweb
- Jason Quinn, Chief Product Officer, Trumid

## [Municipal Bond Market Structure – Fed Intervention, Technology, and Liquidity.](#)

Panelists:

- Stephen Laipply, Managing Director, Head of U.S. iShares Fixed Income ETF's, BlackRock
- Tim Stevens, COO and Co-Founder, Lumesis
- Dan Bingham, Head of Institutional Markets, BAM
- Hardy Manges, Head of Municipal Dealer Sales, MarketAxess
- Chris Lee, Managing Director, Wells Fargo Securities

**November 13**

[Fixed Income Regulation and Market Structure Given Economic Shutdown, Stimulus, and Fed Programs](#) with Robert Cook, President and CEO, FINRA

November 17, 2020

---

## [Get Your Copy of the New Federal Taxation of Municipal Bonds Deskbook Today!](#)

The latest edition of the [Federal Taxation of Municipal Deskbook](#), prepared by NABL's Section 103 Editorial Board, is now available! The new edition gathers a selection of the most used IRC sections and applicable regulations dealing with municipal finance as well as the as the most relevant statutory and legislative history cites for each section, SLGS regulations and important revenue procedures.

It also includes:

- Proposed Treasury Regulation § 1.1001-6 regarding transition from interbank offered rates.
- Treasury Decisions 9854 which makes changes to Treasury Regulation § 1.148-2 and makes final Treasury Regulations § 1.148-11(n), Investment-type property.
- Rev. Proc. 2019-17 regarding qualified residential rental projects to use certain group references for tenants.
- Notice 2019-39 regarding current refunding for certain targeted state, local and Indian tribal government bond programs.

The deskbook is organized by code section for easy reference, and it's a great resource for bond and tax attorneys, issuers, underwriters, and financial advisors who need fast access and definitive answers.

NABL also recently released the Eighth Edition of the [Federal Securities Laws of Municipal Bonds Deskbook](#). This is an essential guide for all bond lawyers, regulatory staff, in-house counsel for investment banking firms and banks, state and local government attorneys, and other securities professionals. Prepared by members of NABL's Securities Law Editorial Board, this comprehensive publication delivers all key materials relating to the federal securities laws of municipal bonds in a portable deskbook and companion eBook with expanded content.

The new edition includes updates to the SEC and MSRB Rules and the most recent relevant MSRB notices and SEC Actions. It also contains key sections of the Securities Act of 1933, Securities Exchange Act of 1934, and the Investment Company Act of 1940, as well as select SEC cease-an-

-desist orders, interpretive and no-action letters, and summaries of important SEC enforcement actions and reports.

---

## **Ethical Considerations in a Digital World: Live NABL Webinar**

With the COVID-19 pandemic, new ethical and client confidentiality considerations have surfaced regarding the expanded use of email, working from home and the use of home computer networks, online meetings and platforms, and the use of mobile technology and phones. On **Tuesday, December 8, 2020, 1:00 - 2:30pm EST**, NABL will host a live Zoom webinar, "[Ethical Considerations in a Digital World: Why These Matter to Your Public Finance Practice](#)," that will discuss the rapidly changing technology environment within a public finance practice.

The panelists, Jason Akers, Foley & Judell L.L.P, New Orleans, LA, and Ryan K. Callender, Squire Patton Boggs (US) LLP, Cleveland, OH, will take an in-depth look at the ethical issues surrounding bond counsel practice in municipal finance transactions and the application of the Model Rules of Professional Conduct to selected topics. The webinar will have an emphasis on cybersecurity and the risks associated with everyday technology, especially as they relate to the changing workplace settings surrounding the COVID-19 pandemic.

This is the perfect opportunity for you to secure your ethics and technology CLE credits before the end of the year. The live webinar is \$195 for members and \$295 for non-members.

**CLE Information:** NABL has applied for and anticipates receiving between 1.5 and 1.8 hours of ethics credit in states that accredit live webinars and in Florida and North Carolina that offer technology credit

[Click here](#) to register.

---

## **US Fixed Income Issuance and Outstanding: SIFMA Research Quarterly**

A quarterly report containing brief commentary and statistics on total U.S. fixed income markets.

[Research Quarterly, Fixed Income](#)

November 6, 2020

- 
- [GASB Proposes New Implementation Guidance to Assist Stakeholders with Application of its Pronouncements.](#)
  - [Real-Time Financial Reporting Improves Muni Bond Markets.](#)
  - [Hawkins Advisory: Rev. Proc. 2020-44, Advance Guidance for Certain Transitions from IBORs](#)
  - [GFOA Working Group Focusing on Libor Transition.](#)
  - [What You Need to Know for the Upcoming LIBOR Transition: Best Practices and Guidance -](#)

[Ballard Spahr Podcast](#)

- [More High-Yield Muni Borrowers Are Defaulting but Investors Still Want In.](#)
- Substantive Native American tax case [here](#) if that's your bag, baby.
- And finally, And That Narrows Things Down How? is brought to us this week by [Troutman v. Louisville Metro Department of Corrections](#) (We definitely need to add Trout Man to the Marvel Cinematic Universe.), in which the Department of Corrections got dinged for not recognizing that an inmate was suicidal despite the fact that he, "showed signs of depression; expressed feelings of hopelessness; appeared anxious, afraid, or angry." But in all fairness, that description currently applies to - I don't know - EVERY SINGLE LAST ONE OF US!

---

## **VOTING - GEORGIA**

### **[Wright v. Sumter County Board of Elections and Registration](#)**

**United States Court of Appeals, Eleventh Circuit - October 27, 2020 - F.3d - 2020 WL 6277718**

Voter brought action challenging county's re-drawn school board district map, alleging that the electoral mechanism created by the new map would violate section 2 of the Voting Rights Act by diluting the strength of Black voters in county.

The United States District Court granted summary judgment in favor of county board of elections and registration. Voter appealed. The United States Court of Appeals reversed and remanded. Following bench trial on remand, the District Court found a section 2 violation, enjoined upcoming school board elections, and drew a new district map for county's school board. Board appealed.

The Court of Appeals held that:

- Court of Appeals would review the entire record, both what voter's expert on redistricting demographic analysis and the analysis of racial voting patterns presented at trial and the findings, report, and maps presented by special master in subsequent remedial proceedings, and
- District court did not clearly err in finding that county's re-drawn school board district map violated section 2 of the Voting Rights Act.

---

## **ZONING & PLANNING - GEORGIA**

### **[Dawson County Board of Commissioners v. Dawson Forest Holdings, LLC](#)**

**Court of Appeals of Georgia - October 29, 2020 - S.E.2d - 2020 WL 6336058**

Landowner brought two actions against county board of commissioners and board's commissioners in both their official and individual capacities, after board denied landowner's zoning requests, asserting that the current zoning classification was unconstitutional and seeking prospective relief to prevent its enforcement.

The Superior Court granted defendants' motion to dismiss actions against the board and its commissioners in their official capacities, but declined to dismiss the actions against the commissioners in their individual capacities. The parties cross-appealed.

The Court of Appeals held that:

- Sovereign immunity barred landowner's claims against county board of commissioners and its

- commissioners in their official capacities;
- Legislative immunity did not bar landowner's claims against commissioners, in their individual capacities; and
- Landowner plausibly stated claims against commissioners in their individual capacities.

Sovereign immunity barred landowner's claims for declaratory and injunctive relief against county board of commissioners and its commissioners in their official capacities; the claims sought injunctive and declaratory relief from the enforcement of an allegedly unconstitutional ordinance, i. e., zoning classification as applied to the properties, against the board and its commissioners in their official capacities, Supreme Court decision laying out sovereign immunity rule did not exempt zoning cases, and landowner identified no constitutional or statutory authority waiving sovereign immunity on the ground that an action was a zoning case.

Legislative immunity did not bar landowner's claims against commissioners on county board of commissioners, in their individual capacities, in which landowner challenged current zoning classification and sought prospective relief to prevent its enforcement; even assuming commissioners' votes against rezoning the properties were legislative acts, landowners claims did not arise from commissioners' past votes on the properties' zoning classifications, but instead, their claims for declaratory and injunctive relief arose from commissioners' anticipated future enforcement of allegedly unconstitutional zoning classifications.

Landowner plausibly stated claims against commissioners on county board of commissioners, in their individual capacities, in which landowner challenged current zoning classification and sought prospective relief to prevent its enforcement; complaints claimed that commissioners were empowered to enforce the current, allegedly unconstitutional zoning classifications on the properties, and the allegations of the complaints did not disclose with certainty that landowner would not be entitled to relief under any state of provable facts asserted in support.

---

## **LIABILITY - KENTUCKY**

### **[Troutman v. Louisville Metro Department of Corrections](#)**

**United States Court of Appeals, Sixth Circuit - October 29, 2020 - F.3d - 2020 WL 6336315**

Estate and daughter of pretrial detainee who committed suicide while in solitary confinement at correctional facility brought civil rights action against classification officer, facility director and municipality, alleging deliberate indifference.

The United States District Court entered summary judgment in favor of defendants. Daughter appealed.

The Court of Appeals held that:

- Fact question as to whether classification officer acted with deliberate indifference to pretrial detainee's likelihood of suicide precluded summary judgment in favor of officer;
- Daughter failed to establish claim that director of correctional facility acted with deliberate indifference; and
- Daughter failed to establish claim that municipality acted with deliberate indifference.

Genuine issue of material fact as to whether classification officer acted with deliberate indifference to pretrial detainee's likelihood of suicide precluded summary judgment in favor of officer in detainee's daughter's § 1983 action alleging violation of due process following detainee's suicide;

although officer claimed reliance on a medical judgment that detainee no longer presented a suicide risk, the situation did not remain stable between detainee's initial clearance from medical and his suicide days later, as detainee was involved in altercations that merited his removal to isolation, and medical clearance to general population was not the same as clearance to solitary confinement with access to bedsheets and barred windows.

---

## **ZONING & PLANNING - MAINE**

### **[Portland Pipe Line Corporation v. City of South Portland](#)**

**Supreme Judicial Court of Maine - October 29, 2020 - A.3d - 2020 WL 6325858 - 2020 ME 125**

Pipeline operator and trade association brought action against city and city's code enforcement officer, challenging validity of city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor and building new structures for that purpose.

The United States District Court granted in part and denied in part defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment, and, after bench trial, dismissed plaintiffs' sole remaining claim. Plaintiffs appealed. The United States Court of Appeals certified question.

The Supreme Judicial Court held that:

- City ordinance was not in direct conflict with the Maine Department of Environmental Protection's (MDEP) exercise of the State's police power pursuant to the Coastal Conveyance Act;
- In a matter of first impression, license issued by the MDEP to pipeline operator, that authorized operator to reverse the flow of oil in one of its pipelines, was not an "order" within meaning of the Coastal Conveyance Act; and
- The Coastal Conveyance Act did not preempt city ordinance by implication.

City ordinance intended to limit air pollution by prohibiting the bulk loading of crude oil onto any marine vessel in city's harbor was not in direct conflict with the Maine Department of Environmental Protection's (MDEP) exercise of the State's police power pursuant to the Coastal Conveyance Act; the Ordinance did not purport to require the MDEP to do anything that the Act said it could not do, nor did it bar the MDEP from doing what the Act says that it could do, and it was not impossible to comply with both the ordinance and the license issued to pipeline operator by the MDEP, where the license permitted, and the ordinance did not forbid, transporting oil from city's harbor via pipeline to Canada, as operator had always done.

License issued by the Maine Department of Environmental Protection's (MDEP) to pipeline operator, that authorized operator to reverse the flow of oil in one of its pipelines, was not an "order" within meaning of the Coastal Conveyance Act; while the words "Department Order" appeared on the first page of the renewal license, the license did not command, direct, or instruct the operator to do anything other than fill rodent burrows and remove soil from the base of storage tanks before it conducted permitted activities.

The Coastal Conveyance Act did not preempt city ordinance intended to limit air pollution by prohibiting the bulk loading of crude oil onto any marine vessel in city's harbor by implication; the Act unambiguously declared that municipal ordinances concerning oil terminal facilities were valid unless they directly conflicted with the Act or rules or orders made pursuant to it, and the city's

home rule authority to enact the ordinance was expressly recognized and affirmed by the Act.

---

## **TELECOM - MASSACHUSETTS**

### **[Cellco Partnership v. City of Peabody](#)**

**Appeals Court of Massachusetts - September 24, 2020 - N.E.3d - 98 Mass.App.Ct. 496 - 2020 WL 5667189**

Personal wireless services carrier sought review of city's denial of special permit application to construct a wireless services facility to remedy wireless coverage gap in city, alleging violation of Telecommunications Act (TCA).

The Land Court Department granted summary judgment for carrier. City appealed.

The Appeals Court held that:

- Municipal-wide distributed antenna system was not a feasible alternative to proposed facility;
- Statements in summary judgment affidavit concerning cost comparisons for alternative to facility were conclusory and unsupported; and
- No feasible alternative existed.

Municipal utility's proposed municipal-wide distributed antenna system to remedy personal wireless services coverage gap in city was not a feasible alternative to carrier's proposed personal wireless service facility, and thus city's denial of carrier's special permit application to construct facility effectively prohibited provision of personal wireless services in violation of Telecommunications Act (TCA), where carrier requested a price proposal seven times over a two-month period, utility failed to offer any price proposal, and parties could not reach an agreement as to provision of communication services to the new antennae, pole rental fees, and safety concerns.

Statements from municipal utility's affidavit about estimated cost comparisons for a proposed alternative option to remedy carrier's coverage gap for personal wireless services were conclusory and unsupported, and thus, insufficient to defeat motion for summary judgment in carrier's zoning appeal alleging that city's denial of special permit application to construct a wireless services facility violated Telecommunications Act (TCA) as an effective prohibition on service, where proposed option failed to materialize and cost estimates were developed based on wireless services from a different town.

No feasible alternative existed to carrier's proposed personal wireless service facility, and thus city's denial of carrier's special permit application to construct facility effectively prohibited provision of personal wireless services in violation of Telecommunications Act (TCA), where carrier made diligent attempts, over course of four and one-half years, to find another feasible option, carrier considered multiple locations including utility pole, a church steeple, and site itself, carrier explored other options, such as small cell antennae and a municipal-wide distributed antenna system, and carrier considered some options multiple times.

---

## **EMINENT DOMAIN - MISSISSIPPI**

### **[Bay Point Properties, Inc. v. Mississippi Transportation Commission](#)**

**Supreme Court of Mississippi - October 29, 2020 - So.3d - 2020 WL 6334788**

Landowner filed inverse condemnation proceedings against the Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property.

The Circuit Court entered judgment on jury verdict finding that the easement, for which MTC had paid \$50,000, continued to encumber the property, but that the use by MTC was not a highway purpose and awarding landowner the encumbered value of \$500.00 and no attorney fees. Landowner appealed. The Supreme Court affirmed in part, reversed in part, and remanded for award of attorney fees. On remand, the Circuit Court awarded fees, but not in amount requested, and landowner appealed.

The Supreme Court held that trial court's decision, in making award of prevailing party attorney fees to landowner in inverse condemnation action, to place greater weight on the results obtained and to award landowner only \$67,277.35 of the \$880,171.81 sought was not manifest abuse of discretion.

Trial court's decision, in making award of prevailing party attorney fees to landowner in inverse condemnation action, to place greater weight on the results obtained and to award landowner only \$67,277.35 in attorney fees, costs and expenses, not the \$880,171.81 that it sought for obtaining an inverse condemnation award in nominal amount of \$500.00, was not unmistakable or indisputable error and could not be disturbed under a "manifest abuse of discretion" standard of review.

---

## **MUNICIPAL GOVERNANCE - WASHINGTON**

### **[Matter of Recall of White](#)**

**Supreme Court of Washington - October 29, 2020 - P.3d - 2020 WL 6332723**

Petition was filed for recall of city councilmember based on actions that he took which allegedly undermined public response to corona virus pandemic.

The Superior Court dismissed the petition, and appeal was taken.

The Supreme Court held that:

- Charge in recall petition, that member of city council had used his position as elected official to wrongfully encourage citizens to disobey stay-at-home orders issued during corona virus pandemic, was factually and legally insufficient;
- Charge in recall petition, that councilmember had encouraging the public to disobey emergency orders issued during corona virus pandemic, such as by not wearing face mask, was both factually and legally insufficient; and
- Charge in recall petition, that member of city council had refused to attend council meetings in protest of stay-at-home orders and mask mandates issued during corona virus pandemic, was both factually and legally insufficient.

---

## **TAX - SOUTH DAKOTA**

### **[Flandreau Santee Sioux Tribe v. Terwilliger](#)**

**United States District Court, D. South Dakota, Southern Division - October 21, 2020 - Slip Copy - 2020 WL 6158920**

Flandreau Santee Sioux Tribe, filed action seeking a judicial declaration that, under federal law, the State of South Dakota did not have the authority to impose the South Dakota excise tax in connection with services performed by non-Indian contractors on the Tribe's on-reservation construction project.

The District Court held that:

- The contractor's excise tax is not expressly preempted by federal law.
- The case turns on whether the imposition of the State contractor's excise tax on Henry Carlson Company, a non-Indian contractor, for construction services performed on-reservation is preempted under the Bracker balancing test.
- The federal government has a strong interest in the construction, renovation, maintenance, and safety of Indian gaming facilities and the extent of federal regulation and control weighs against imposition of the State excise tax.
- Federal interests weigh against the imposition of the State excise tax.
- The State excise tax interferes with the Tribe's interests in tribal self-sufficiency, self-determination, and sovereignty.
- The State failed to establish that the use of State services funded by the State general fund sufficient to justify the imposition of the State excise tax.
- The State's interest in being reimbursed for State services is minimal, and does not weigh in favor of imposition of the excise tax.
- The loss of the Tribe's excise tax would have a small impact to the State's budget, and more importantly, State agencies' budgets funded by the State general fund from a loss of the Tribe's excise tax.
- The State's general interest in raising revenue cannot justify the substantial burden on federal and tribal interests and weighs against imposition of the excise tax.
- The State's general regulation of the construction industry does not outweigh the tribal and federal interests in Indian gaming revenue.
- The State's interest in uniform application of the contractor's excise tax is minimal and weighs against imposition of the excise tax.
- The term "trade" as used in the Indian Trader Statutes includes the sale of construction materials and services to Indians on-reservation. Thus, the Indian Trader Statutes expressly preempt the State contractor's excise tax at issue here.
- Based on the discussion of federal and tribal interests discussed, and incorporating the federal and tribal interests under IGRA that coincide with the federal and tribal interests under the Indian Trader Statutes, the federal and tribal interests weigh against imposition of the State excise tax.

"In conclusion, the court finds that under a Bracker analysis, the State of South Dakota's interest in imposing the contractor's excise tax does not outweigh the tribal and federal interests in promoting tribal self-sufficiency and self-governance, ensuring the Tribe is the primary beneficiary of gaming, protecting gaming as a means of general tribal revenue, and securing tribal economic development. Considering all the Bracker factors, the evidence presented at trial demonstrated: (1) a strong historical backdrop of tribal sovereignty and sovereignty in the field of Indian gaming; (2) the federal regulatory scheme of IGRA is extensive; (3) there is a strong federal interest in the construction and maintenance of Indian gaming to protect the environment and public health and safety of Indian gaming facilities and patrons while simultaneously promoting tribal self-sufficiency and strong tribal government as evidenced by the statutory structure of IGRA; (4) the Tribe's own regulation of gaming, gaming revenue and on-reservation construction is extensive; (5) the economic burden of the State excise tax falls directly on the Tribe; (6) the State excise tax places a substantial burden on the Tribe's ability to generate gaming revenue and provide essential tribal governmental programs through the Tribe's budget; (7) there is no nexus between the services or regulations funded by the

State general fund and provided by the State to the Tribe, tribal members, or Henry Carlson Company and the Casino renovation project; (8) any State services provided to the Tribe, tribal members, the Casino, or Henry Carlson Company off-reservation are not connected to the Casino renovation project and minimal; (9) the State does not uniformly apply the contractor's excise tax or its Department procedures for Indian country tax exemptions; and (10) the State provides little government services funded from the general fund to the Tribe, tribal members, the Casino, or Henry Carlson Company; the State does not uniformly apply the tax; and as a result, the State can only demonstrate a general interest in raising revenue."

"The South Dakota contractor's excise tax on Henry Carlson Company's gross receipts derived from the on-reservation construction and renovation of the Royal River Casino is not per se invalid nor expressly preempted under IGRA. After considering the federal, tribal, and state interests under the Bracker balancing test, the court finds that the tax interferes with federal and tribal interests reflected in IGRA. This outweighs the State's minimal interests. Thus, the State tax is preempted under IGRA."

"Additionally, because Congress has not said otherwise, Indian Trader Statutes expressly preempt the contractor's excise tax. In the alternative, even if the Indian Trader Statutes do not expressly preempt the State tax, after considering the federal, tribal, and state interests under the Bracker balancing test, the court finds that the tax interferes with federal and tribal interests reflected in the Indian Trader Statutes. This outweighs the State's minimal interests. Thus, the State tax is preempted under the Indian Trader Statutes. Because the State's interests do not outweigh the strong federal and tribal interests under IGRA or the Indian Trader Statutes, the State contractor's excise tax is preempted under federal law."

---

## **[GASB Proposes New Implementation Guidance to Assist Stakeholders with Application of its Pronouncements.](#)**

Norwalk, CT, November 17, 2020 — The Governmental Accounting Standards Board (GASB) today proposed implementation guidance in the form of questions and answers intended to clarify, explain, or elaborate on certain GASB pronouncements.

The [Exposure Draft, Implementation Guidance Update—2021](#), contains proposed new questions and answers that address application of GASB standards on leases, fiduciary activities, and other topics. The Exposure Draft also proposes amendments to previously issued implementation guidance.

The GASB periodically issues new and updated guidance to assist state and local governments in applying generally accepted accounting principles (GAAP) to specific facts and circumstances that they encounter. The GASB develops the guidance based on:

- Application issues that are raised during due process on GASB Statements
- Questions it receives throughout the year, primarily from governments and auditors, and
- Topics identified by members of the Governmental Accounting Standards Advisory Council and other stakeholders.

The guidance in Implementation Guides is cleared by the Board and constitutes Category B GAAP.

The Exposure Draft is available on the GASB website, [www.gasb.org](http://www.gasb.org). The GASB encourages stakeholders to review the proposal and provide comments by February 15, 2021. Information about

how to comment can be found at the front of the Exposure Draft.

---

## **[Real-Time Financial Reporting Improves Muni Bond Markets.](#)**

A team of researchers from the UO Department of Finance found three-fold benefits when the gap in trade reporting in municipal bond markets changed from a full day to fifteen minutes after implementation of the Real-Time Transaction Reporting System.

Their findings demonstrate that municipalities can benefit from the real-time reporting system through more efficient capital markets, creating benefits for society because municipal bond offerings fund infrastructure investments that often improve quality of life, education and public safety.

In "[The Difference a Day Makes: Timely Disclosure and Trading Efficiency in the Muni Market](#)," which was published online ahead of print in the Journal of Financial Economics, the authors John Chalmers and Z. Jay Wang, professors of finance in the Lundquist College of Business at the University of Oregon, and Steve Yu Liu, who earned a doctorate at the UO and is now with the Department of Business and Information Technology at the Missouri University of Science and Technology, assess the reporting system's impact on muni markets.

By assessing data surrounding the time that Real-Time Transaction Reporting System was implemented, the study demonstrates how real-time price discovery has transformed municipal bond trading, investing and, potentially, the cost of financing civic projects. The researchers argue that faster and more accurate disclosure in the \$4 trillion over-the-counter municipal bond market leads to efficiencies that are likely to benefit investors, issuers and ultimately taxpayers.

"First, we find a significant reduction in transaction costs that varies with investor sophistication," they wrote in the paper. "Second, we find significant increases in municipal trading volume across the liquidity spectrum. Third, we find that dealers increased market-making activities after the introduction of the Real-Time Transaction Reporting System."

An alternative explanation for the findings, they noted, is that they could reflect overall improvement in access to information in over-the-counter markets due to the increased use of online resources in the period surrounding the implementation of the real-time reporting system. To address this concern, the authors selected a subset of corporate bonds as a control group.

These corporate bonds were not subject to similar changes in disclosure requirement in the sample period and should have captured the impact of common improvements to the over-the-counter markets. By comparing the changes in trading costs between the municipal bonds and the control group, the authors were able to isolate the effects of Real-Time Transaction Reporting System, apart from other factors.

More timely disclosure in the municipal bond markets was a particular boon to investors, with the average trading costs declining by 30 basis points or 14 percent. Interestingly, they noted, the impact of the real-time reporting varies significantly across investor sophistication. While retail investors benefited mainly from a reduction in dealer's costs of intermediating trades, sophisticated traders were able to take advantage of more timely trading information and negotiate better trading terms with dealers, reflecting improved bargaining positions.

The authors also studied the impact of the reporting system on bond dealers' market making

activities. They find an increase in trading volume for all bond liquidity groups sorted by pre-RTRS trading volume. Consistent with this, the researchers found, dealers committed more capital and were more actively engaged in intermediating municipal bond trading in the post-RTRS period. These findings alleviate concerns that bond dealers may decrease market-making efforts due to deteriorating bargaining positions.

While switching to real-time reporting incurs additional costs, the research suggests that the sacrifices are likely to be well worth it for both investors and bond dealers. Further, by taking costs out of the system and improving investor welfare, municipalities benefit.

—By Michael Maiello, for the Lundquist College of Business

November 11, 2020

---

## **Municipal Bonds: The State Of The States**

### **Summary**

- The media has been rife with headlines foretelling revenue shortfalls and a cash crisis for battered state budgets.
- We look under the hood to better assess the status of the headline-grabbing states with the largest debt burdens.
- Bond investors are right to be concerned.

As COVID-19 continues to slow the economy, the media has been rife with headlines foretelling revenue shortfalls and a cash crisis for battered state budgets. We look under the hood to better assess the status of the headline-grabbing states with the largest debt burdens.

[Continue reading.](#)

### **Seeking Alpha**

Nov. 11, 2020

---

## **Amid a Spate of New Issuance, Municipal Bonds Stand Strong.**

Municipal bonds and exchange traded funds, including the iShares National Muni Bond ETF (NYSEArca: MUB), are proving sturdy in the face of a raft of new issuance in the space.

MUB, the largest municipal bond ETF by assets, seeks to track the investment results of the S&P National AMT-Free Municipal Bond Index™. The fund generally will invest at least 90% of its assets in the component securities of the underlying index and may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents. The index measures the performance of the investment-grade segment of the U.S. municipal bond market.

### **MUB YTD Performance**

“Municipals posted modestly negative total returns in October, with the S&P Municipal Bond Index

finishing the month down -0.14%,” according to BlackRock research. “Interest rates moved higher as economic data remained firm and the market began to price in an increased likelihood of a Democratic sweep, which, at the time of this writing, appears unlikely. (Bond prices fall when rates rise.) Credit sectors fared better than the more rate-sensitive segments. Muni-to-Treasury ratios in the intermediate and long end of the yield curve declined, but remain high versus the historical average.”

## **Municipal Bonds Are Resilient**

Yields on munis have been steadily falling with bond prices rising even before the coronavirus hubbub. After the 2017 tax law changes, demand for tax-exempt munis became more attractive in response to caps in the federal deduction for state and local taxes, especially among higher-tax states. The tax law also diminished supply due to new limits on when governments can issue tax-exempt debt.

Due to the economic shutdown, which led to a spike in unemployment rates across the country, plenty of states are facing budget woes. Some of those with the worst shortfalls are among the largest issuers of municipal bonds, meaning they’re also among the biggest weights in this category’s ETFs. However, to this point, the muni market is proving resilient.

“October posted the largest monthly issuance on record at \$71 billion. Municipalities pulled forward deals ahead of anticipated election uncertainty. Despite the acceleration, supply was well absorbed given the expectation for a corresponding dearth of issuance in November and December. On average, new deals were oversubscribed by 4.6 times, up from 4.2 in September,” according to BlackRock.

### ETF TRENDS

by TOM LYDON on NOVEMBER 12, 2020

---

## **More High-Yield Muni Borrowers Are Defaulting but Investors Still Want In.**

### **Prices on risky bonds have climbed even as repayment troubles have mounted**

Covid-19 is wreaking havoc on the market for risky municipal bonds. Investors desperate for tax-exempt yield are still piling in.

Fixed-income returns that come with a tax break have become so precious to affluent American households that they are willing to overlook a spike in defaults, growing reports of repayment trouble and contagion risks of communal living projects.

The S&P Municipal Bond High Yield Index is now only about 1% lower than its pre-coronavirus pandemic level, despite falling 15% in March as global shutdowns roiled the market.

The Federal Reserve stepped in at that time to backstop a variety of assets including municipal bonds, resetting investor expectations about how much risk the pandemic poses to a range of markets from stocks to commodities to corporate and muni debt.

[Continue reading.](#)

## **[Biggest Source of Tax Revenue in Every State.](#)**

Stacker used survey data from Pew Charitable Trusts, which analyzed tax revenue for U.S. states for the 2019 financial year. For each state, it found the biggest source of tax revenue from the following categories—personal income, corporate, general sales, selective sales, severance, licenses, and property. The data was released in June 2020.

The 50 states have carved out their own ways to collect taxes from their residents and businesses. Those states rich in natural resources collect severance taxes on oil and natural gas extraction, while Delaware trains its tax eye on corporations. Most stick to more typical personal income and sales taxes.

Nearly every state employs progressive ways of taxing the rich more than the poor, although several use flat-rate income taxes that take a much bigger relative bite out of low incomes than of big salaries. And in many states, sales taxes, the most regressive levy of all, comprise the biggest source of public revenue.

The size of tax revenues range from the enormous \$188 billion collected last year by the state of California to the far more modest \$1.78 billion pocketed by the state of Alaska.

People everywhere love to complain about the taxes they pay, but a survey taken this year found 48% of people thought the amount of taxes they paid were about right, and more than the 46% who thought their taxes were too high. Another 3% thought the taxes they paid were too low.

Check out the list to see what kinds of tax dollars your state collects, and how it compares with the rest of the country.

[View the list.](#)

**dbrnews.com**

Ellen Dewitt | Nov 13, 2020

---

## **[GFOA Working Group Focusing on Libor Transition.](#)**

The Government Finance Officers Association has formed a working group to help issuers prepare for the phase-out of Libor at the end of 2021.

The group of around a dozen issuers, bankers, broker-dealers, bond attorneys, and municipal advisors will meet Tuesday for their second time to sort out their priorities for educating the public finance community.

"We're all looking at it from our different perspectives at what we can do in our respective roles to get the word out about the Libor transition and that the issuers who have that exposure are aware of it," said Cindy Harris, chief financial officer of the Iowa Finance Authority who is chairing the working group.

The working group plans to meet every other week to develop instructions to guide participants in the municipal bond market to make the transition.

"I feel that the Libor transition is probably not on the top of people's minds," said Harris, "Even if they have Libor they may think it's not as pressing a matter to deal with than a lot of the other challenges they are having to deal with in their jurisdiction. That's why I think it's good to get the word out that this is coming sooner than people may think. If you are changing contracts, you may need board approvals to do that. And that may need a month or two of lead time."

The International Swaps and Derivatives Association announced Oct. 23 its IBOR Fallbacks Supplement and IBOR Fallbacks Protocol.

"While fallbacks aren't designed to be a primary means of transitioning from Libor and other IBORs, they do mean a critical safety net will be in place for those participants that still have exposure to IBORs when a cessation or non-representativeness announcement is made," ISDA General Counsel Katherine Tew Darras said in a speech Monday.

ISDA said the supplement amends its standard definitions for interest rate derivatives to incorporate robust fallbacks for derivatives linked to certain IBORs, with the changes coming into effect on January 25, 2021. From that date, all new cleared and non-cleared derivatives that reference the definitions will include the fallbacks.

"During this period the fee is free for non-primary dealers," said Harris. "After January 25, new transactions will automatically contain the fallback language via the supplement. However, adherence to the protocol after January 25 for legacy contracts will incur the \$500 fee. To avoid the fee, issuers can also execute bilateral amendments."

The \$500 fee applies to each legal entity unless they have agency authority.

Additionally, ISDA said the protocol will enable market participants to incorporate the revisions into their legacy non-cleared derivatives trades with other counterparties that choose to adhere to the protocol. The protocol has been open for adherence since the Oct. 23 date of the announcement and also becomes effective on Jan. 25 with the supplement.

By the end of next month, the United Kingdom's Financial Conduct Authority is expected to officially declare Libor as nonrepresentative, which will establish an endpoint for this reference rate.

Harris said the endpoint will be used as a reference date for establishing a five-year lookback for a new reference rate.

"The announcement date will determine the five-year median window for purposes of calculating the fallback rate spread adjustment," Harris said. "The spread adjustment is based on the median five-year historical difference between LIBOR and SOFR compounded over each corresponding period."

Harris said GFOA is likely to advise issuers to consult with their swap advisor or qualified independent representative (QIR) to help them navigate that transition.

Harris said she intends to have her swap advisor perform a historical five-year regression of the

Secured Overnight Financing Rate (SOFR) plus the spread for Libor and a separate calculation using the SIFMA rate as an alternative.

“GFOA will ramp up its effort to get the word out about Libor,” she said. “The industry will also try to get together some guiding principles and not create new resources, but to aggregate them.”

The group also wants to make the resources understandable to issuers who may only have used Libor occasionally and aren’t familiar with the terminology.

In addition, the GFOA debt committee has a subgroup that reviewing GFOA’s best practices to determine if any updates are needed.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 11/10/20 01:43 PM EST

---

## **[The Mnuchin-Powell Dream Team Faces Its Biggest Test.](#)**

**The Treasury has resisted extending the Fed’s lending programs past year-end. Political pressure will only complicate the decision.**

Throughout the U.S. coronavirus crisis, investors have viewed Federal Reserve Chair Jerome Powell and Treasury Secretary Steven Mnuchin as steady leaders who are capable of steering the world’s largest economy through uncharted waters. They have appeared together before Congress to give updates on their joint emergency lending programs, which helped restore smooth functioning to corporate-bond and municipal-debt markets. Even when elected officials in both parties dragged their feet on another round of fiscal aid, traders could seemingly rest easy knowing that the Mnuchin-Powell duo would remain above politics and keep markets and the economy on the right track.

That was before last week’s U.S. elections, which showed Joe Biden winning the presidency while Republicans appear likely to retain control of the Senate. Now it seems Democrats and Republicans are jockeying for power, and Mnuchin risks being thrown into the fray as well, given that his time as Treasury Secretary is presumably drawing to a close.

The most pressing issue on the table is whether to extend some or all of the Fed’s emergency lending programs, which are set to expire on Dec. 31. The Municipal Liquidity Facility, for instance, which offers a backstop to state and local governments, will only accept notices of interest for loans at least 30 days before year-end, according to a central bank statement last month. So as it stands, three weeks from now, no state or city will be able to turn to the Fed to issue bonds at a known interest rate if Covid-19 outbreaks threaten their residents and economies.

[Continue reading.](#)

### **Bloomberg Opinion**

By Brian Chappatta

November 12, 2020, 3:30 AM PST

---

## **What Does President-Elect Joe Biden's Presidency Mean for Municipal Debt Markets?**

In more ways than one, the 2020 American presidential election was a historic one: Joseph R. Biden, the 46th president of the U.S., will be the oldest president to take office and his VP will be the first female to hold the office of vice president in American history.

Aside from these historical measures, many investors are trying to decipher the president-elect Joe Biden's fiscal policies and their impact on the fixed income markets. Furthermore, given the rapid increase in COVID-19 cases throughout the world, how is he going to prioritize his efforts for local governments to ease their financial strains and revive the impaired revenue sources?

In this article, we will take a closer look at President-elect Biden's election promises and how they will likely materialize in the upcoming years.

### **Financially Strapped Local and State Governments**

It is no secret that all local and state governments are faced with some serious liquidity challenges due to their impaired revenue sources due to COVID-19. These challenges are also worsened by the additional expenditures required by these government bodies to combat COVID-19 and provide testing in their respective jurisdictions - which they may not have been prepared or budgeted for.

President-elect Joe Biden will likely get the next stimulus bill passed; this bill has already gone through the House of Representatives, and the Senate has shown some interest in prioritizing this bill post-election. This will not only be a victory for President-elect Biden's camp, but also a piece of legislation that can provide over \$436 million in funding for local and state governments. This bill mirrors the earlier tranches of COVID-19 financial help from the federal government, where the local governments submitted their respective claims for funding based on the lost revenues due to COVID-19.

Furthermore, the transportation agencies throughout the U.S. have been one the hardest hit local government agencies. This is strictly because these agencies rely heavily on the ridership volumes for the revenues. Since March, 2020, all - from small and midsize to large - transportation agencies have been severely impacted by the Coronavirus shutdowns and companies allowing their employees to work remotely. The inevitable shelter-in-place orders throughout the U.S. have delivered the hardest blow for these agencies. If passed, this new stimulus bill can be a life saver particularly for transportation agencies including light rail and bus systems.

Be sure to check out our previous article [here](#) on how the local government's fiscal resilience is going to be tested long after the COVID-19.

### **Infrastructure Push and Green Energy Promises**

Almost every president in recent history has highlighted the dire need to fix and revamp America's infrastructure, including bridges, highways, airports and much more. President-elect Biden is no different in his promises.

The federal funding required to undertake these projects will be great for the municipal debt market, and local and state labor markets. It's also important to note that many of the infrastructure projects will require Public-Private Partnerships (PPPs) that will help infuse private and public capital into the markets. For example: airports, hospitals, water and sewerage systems and transportation

projects, etc., are often built with a PPP, where the local government utilizes their ability to issue municipal debt and partner with a corporation to complete the project.

President-elect Biden also talked about the need to limit our dependency on oil and spend more on developing greener alternatives of energy. These efforts can potentially reignite the conversation about Green Debt issued by municipalities in order to fund projects that may include renewable and energy efficiency projects, pollution prevention and control, clean public transportation conservation, green buildings, and sustainable water and wastewater management.

### **Potential Changes to the Marginal Tax Rates**

Although tough without the democratic control of the Senate, President-elect Joe Biden promised some sweeping changes to the tax-code structure based on the income levels where the marginal tax rates is likely to see a hike for the wealthiest Americans; in-turn, increasing the demand for municipal debt investments to capitalize on the tax-exempt income from local, state and federal taxes.

Under Biden's tax plan, individual taxpayers earning more than \$400,000 annually would be taxed at 39.6%, up from 37% currently, and subject to an additional 12.4% Social Security tax on wages split equally with their employer. These changes to the marginal tax rates will make tax-exempt income more lucrative for individuals in higher tax brackets, in turn, driving up demand for local government debt.

President-elect Biden has also promised to restore the earlier corporate tax rates for corporations.

### **The Bottom Line**

Although many things are still unclear about the control of the American Senate, which is the key for President-elect Biden to fulfil many of his campaign promises, American voters have chosen a leader who can work with both sides of the aisle on issues that transcend party lines – American infrastructure and reviving the American economy post COVID-19.

It's clear that the American economy has some challenging times ahead; but, with bi-partisan decision-making, these challenges can be overcome for the betterment of America.

**dividend.com**

Nov 11, 2020

---

### **[Municipal Bonds Faring Well Despite Election/Pandemic Uncertainty.](#)**

The municipal and state bond markets are not being hurt as badly as expected prior to the election and before progress was made on a Covid-19 vaccine, according to Adam Stern, senior vice president and director of municipal research at Breckinridge Capital Advisors, a Boston-based financial services firm with \$42 billion in assets under management.

Because Democrats did not take control of the Senate (pending run-off elections in Georgia), there is less likelihood of tax increases in the near future, which should lessen the upward pressure on prices and downward pressure on yields that had been predicted before the election, Stern said in an interview today.

At the same time, a vaccine that could begin distribution sooner rather than later will lessen the need for more stimulus money for municipalities and states, he added. Senate Majority Leader Mitch McConnell has indicated he would like to pass a new stimulus package in the lame duck session of Congress that would be less than the \$1.5 trillion discussed before the election.

"More fiscal support is likely necessary to maintain the current recovery," according to a Breckinridge research report. "For munis, additional federal aid would reduce fiscal pressure." At the same time, "state and local issuers have significantly reduced their payrolls. Service cuts of this sort are beneficial to credit quality in the near-term. However, maintaining these cuts indefinitely will prove challenging."

Tax-free municipal bonds should still be readily available in the near future, Stern said. "But we find that ratings downgrades are likely regardless of the federal response. Mass transportation issuers would unquestionably benefit from increased federal aid."

Financial advisors should be on the alert for municipalities and states, such as Chicago and Illinois, that are in dire financial circumstances, he added. Illinois' credit rating has been downgraded to junk bond status in recent days. Although that is not typical of all states, Illinois presents the type of circumstances advisors should be aware of.

On the plus side, essential service municipal bond issuers have managed through the Covid-19 pandemic better than expected. Loose fiscal and monetary policy, coupled with better management of the virus, has helped limit the worst case outcomes, Stern said in a Breckinridge report. "We anticipate a challenging, but manageable, next several months" for bond investors."

Breckinridge said a combination of factors has contributed to a less dire outlook than was predicted a few weeks ago. For starters, fiscal stimulus provided under the CARES Act has been effective as transfer payments averaged 8% of U.S. personal income between April and August 2020, and these payments likely produced higher-than-expected sales and income tax collections.

In addition, very low interest rates likely allowed some borrowers to refinance maturing obligations to avoid credit mishaps, as well as enabling a significant amount of debt refinancing.

Finally, people have done a better job of managing and adapting to the coronavirus.

## ETF TRENDS

NOVEMBER 11, 2020 | KAREN DEMASTERS

---

### **[Public Finance Sector Optimistic about Biden Presidency.](#)**

Public finance sector officials are optimistic a Joe Biden presidency will mean strong financial support for state and local governments as well as robust infrastructure legislation.

They also are hopeful the negative impacts of a federal tax overhaul enacted in 2017 will be reversed.

The Associated Press called the presidential race in favor of Biden Saturday based on the vote count in Pennsylvania, where mail-in votes pushed him into a lead projected to be insurmountable. Pennsylvania's 20 electoral votes would be more than enough to push Biden past the 270 electoral votes needed to claim victory.

President Trump, however, has not conceded and his campaign has filed lawsuits in several battleground states contesting the results.

"If Biden is ultimately determined to be president, and even with a Republican Senate, there will be tremendous opportunities for infrastructure, bond, and other legislation and regulatory actions," said Charles Samuels, of Mintz Levin, counsel to the National Association of Health & Educational Facilities Finance Authorities.

His organization represents includes smaller nonprofit hospitals and colleges that would benefit from proposed legislation to would increase to \$30 million from the current \$10 million, the limit on small borrowers to use bank-qualified bonds. That provision is part of the House-passed Moving America Forward Act that has been blocked by the Senate.

In the next Congress that takes office Jan. 3, the House bill would need to be reintroduced and most likely modified to include provisions favored by the new administration.

Biden "has a deep understanding of municipal finance and the roles that tax-exempt bonds play to build American infrastructure," said former President of the U.S. Conference of Mayors Steve Benjamin, who is the mayor of Columbia, S.C., and president of Municipal Bonds for America.

Benjamin dealt with Biden when the former vice president was spearheading the Obama administration's implementation of the 2009 American Recovery and Reinvestment Act.

"I know from conversations with him and all his senior policy folks that infrastructure is at the very top of his list," Benjamin said. "We will have the preservation of the tax exemption and a number of creative looks at delivering infrastructure all across the country."

Pension funds, institutional investors, and sovereign wealth funds are eager to invest in American infrastructure that will create millions of jobs, Benjamin said.

Emily Brock, director of the federal liaison center at the Government Finance Officers Association who founded the Public Finance network as the voice of issuer groups on Washington policy issues, said her organization looks forward to meeting with Biden.

"We're thrilled to talk with him with our coalition's efforts to enhance the municipal bond market," Brock said.

Brock said members are encouraged by Biden's support of municipal finance in the past, but wary whether Biden will pursue placing a 28% limit on personal tax deductions.

Benjamin said he had discussions with Biden when he was vice president explaining to him the municipal bond industry's opposition to the 28% limit on deductions.

The Bond Dealers of America was hesitant to discuss a Biden presidency, predicting ongoing litigation will bring uncertainty for weeks.

Mike Nicholas, CEO of BDA, said no matter who is in the White House, he is optimistic for bond initiatives in 2021, including in a future infrastructure bill.

A Biden presidency will make federal infrastructure legislation more doable, said Patrick Luby, senior municipal strategist at CreditSights. The Trump administration also saw infrastructure as a priority, but more in the sense of providing seed money, he said.

“There is a philosophical difference with a Democrat administration that they would be more willing to provide a greater share of federal funding to an infrastructure project,” Luby said.

Biden’s Build Back Better infrastructure plan has many of the same elements of the \$1.5 trillion muni-friendly Moving America Forward legislation passed by House Democrats. That House bill includes many municipal bond provisions such as an increase of the limit on small issuer bank-qualified bonds to \$30 million and a new program of qualified school infrastructure bonds.

It also includes upgrades to smart roads, water systems, municipal transit networks, schools, airports, rail, ferries, ports, and calls for universal broadband access.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11/07/20 12:24 PM EST

---

## **[What Does President-elect Joe Biden’s Presidency Mean for Municipal Debt Markets?](#)**

**In more ways than one, the 2020 American presidential election was a historic one: Joseph R. Biden, the 46th president of the U.S., will be the oldest president to take office and his VP will be the first female to hold the office of vice president in American history.**

Aside from these historical measures, many investors are trying to decipher the president-elect Joe Biden’s fiscal policies and their impact on the fixed income markets. Furthermore, given the rapid increase in COVID-19 cases throughout the world, how is he going to prioritize his efforts for local governments to ease their financial strains and revive the impaired revenue sources?

In this article, we will take a closer look at President-elect Biden’s election promises and how they will likely materialize in the upcoming years.

[Continue reading.](#)

**municipalbonds.com**

by Jayden Sangha

Nov 11, 2020

---

## **[Five Ways The Biden Administration May Affect U.S. Transportation.](#)**

With a new President comes new priorities and direction, and the Biden administration will hit the ground running in January. The Federal Government makes policies that affect how goods and people move, so it is likely that changes in how this happens are afoot. Here are five ways that a Biden administration will likely affect U.S. transportation policy:

### **Increased Government Spending**

Most presidents have liked to spend money, but a Biden presidency will likely encourage the lame

duck session to pass a stimulus package that in part would help the airlines again. More importantly, a Biden administration is likely to drive a true infrastructure bill that could have positive impacts on airports and air traffic control at least. Of course highways and rail can benefit as well, and perhaps drone technology too. Our economy needs people and goods to move freely and efficiently, and thus any infrastructure spend would be focused on making this happen while improving safety for consumers.

### **Amtrak Stays On Track**

“Amtrak Joe” has been a life-long supporter of the National Passenger Rail Service, and has spoken often of the efficiency of trains. While I wouldn’t expect a Biden administration to favor trains over airplanes for most intercity travel, I would expect major funding to Amtrak to allow the railroad to invest in its rolling stock, trackage, and fund longer haul train losses. Any talks of privatizing Amtrak will likely be squashed during this presidency, and the leadership at Amtrak will have the strongest possible supporter in the White House.

### **Federal Minimum Wage Standards Could Raise Local Costs**

Federal efforts to raise the minimum wage, already addressed by some states, would help those at the lower end of the pay scales but also raise costs for smaller local transportation operators among others. This possibly could reduce air service to smaller cities, if an increase in the cost of servicing the plane makes the trip uneconomic. More likely, prices to travel by train, plane, and car would increase a bit to cover this higher labor cost. In a highly price elastic market, this would result in somewhat lower demand.

### **More Regulation**

Transportation in the U.S. is highly regulated the areas of safety, licensing, and maintenance. But consumer advocacy focused regulation, active in the Obama administration but quiet for the last four years, may re-appear though airlines will push against this. This could be focused in areas of ancillary revenue charges, seating density, taxes that would be passed through to customers, refund ability, and more. In cars, improved gas efficiency standards could raise the purchase cost of automobiles and trucks. Less likely but perhaps considered would be investment by foreign companies in US airlines or for foreign airlines to fly within the US. Also, as airlines restructure due to demand losses this administration’s views on potential merger agreements will likely change from the current president. It’s hard to underestimate the creativity with which regulators will wish to control business, and transportation is ripe for this kind of approach.

### **Support For Organized Labor**

The U.S. Airlines and Railroads are highly unionized industries, and a Biden administration with a more progressive labor agenda will be friendly to collective bargaining. This would have no immediate impact on deals currently in place, but could change the tone of future negotiations. Labor in these areas is governed not by typical U.S. Labor law, but by the Railway Labor Act. This act, meant to reduce disruptions in the national transportation networks, makes negotiations drag out at times and in extreme cases could make a Presidential Emergency Board decision requested to stop a planned work action. Thinking this could happen in four years is not realistic, and yet workers in the national U.S. transportation businesses, like the Amtrak employees, will know they have a president that backs them.

### **Forbes**

by Ben Baldanza

Nov 9, 2020

---

## **States and Localities Shouldn't Count on More Federal Aid.**

**Mitch McConnell and other Republicans are opposed to further aid for states and localities. It looks like the Senate will stay in GOP hands, so prospects for relief next year have dimmed.**

President-elect Joe Biden most likely will be dealing with a Senate led by Republican Mitch McConnell. That bodes ill for a lot of Democratic hopes, including major fiscal relief for states and localities.

It takes two sides to make a deal, so perhaps there's something Democrats can trade in exchange for more aid. But that's been the expectation for months now and McConnell hasn't budged.

"Sen. McConnell has put down the marker pretty strongly about why they think a bailout of the states is a bad idea," says Jonathan Williams, chief economist at the American Legislative Exchange Council. "I tend to think that Senate Republicans will hold together and say there are more effective ways to spend money than to send it to state and local governments as a pass-through."

[Continue reading.](#)

GOVERNING.COM

ALAN GREENBLATT, SENIOR STAFF WRITER | NOVEMBER 9, 2020

---

## **Fed's Mester Says All Emergency Lending Facilities Should Be Extended.**

(Reuters) - The emergency lending programs the Federal Reserve set up during the coronavirus pandemic have eased distress in financial markets and are still needed, Cleveland Federal Reserve Bank President Loretta Mester said on Monday.

In addition to slashing interest rates to near zero levels in March and ramping up its asset purchases, the Fed set up a slate of emergency lending facilities to support the markets for commercial paper, municipal bonds, corporate debt and more.

While some of the programs have been lightly used, Mester said their presence serves as a backstop that helps to smooth markets that are not yet in the clear after being disrupted because of the pandemic, she said.

"I don't think we're out of the extraordinary situation that they're meant to help with," Mester told reporters. "I think they are needed at this point, given where we are."

Fed Chair Jerome Powell will be working with the Treasury Department to determine if the programs should be extended beyond the end of the year, Mester said.

"But in my view, if it were me, I would extend all of them," Mester said. "The fact that they exist

provides confidence to the markets.”

The policymaker stressed that the Fed is not out of ammunition when it comes to stimulating the economy and that it could provide more accommodation by adjusting its asset purchase program and using other tools.

Mester also said that the economy rebounded more strongly than she expected, but gains have not been evenly spread. Despite promising news on Monday about a vaccine being developed by Pfizer PFE.N and BioNTech 22UAY.F, , Mester said she thinks economic growth will happen more slowly going forward.

The economy will need support from both fiscal and monetary policy to fully recovery, she said. “There’s still a long way to go.”

By Jonnelle Marte

NOVEMBER 9, 2020

Reporting by Jonnelle Marte; Editing by Chris Reese and Aurora Ellis

---

## **Federal Reserve’s Emergency Loan Programs at Center of Political Fight.**

**Democrats are eyeing the programs as a backup option if they can’t strike a deal to aid states and localities, and believe they may be needed to backstop markets. Republicans want them off the table.**

WASHINGTON — A political fight is brewing over whether to extend critical programs that the Federal Reserve rolled out to help keep credit flowing to companies and municipalities amid the pandemic-induced recession.

The dispute has the potential to roil financial markets, which have calmed significantly since the Fed announced in March and April that it would set up backstops in response to market turmoil spurred by the coronavirus pandemic.

Those programs expire on Dec. 31, and it is unclear whether the Trump administration will agree to extend them. The Federal Reserve chair, Jerome H. Powell, and Treasury secretary, Steven Mnuchin, must together decide whether they will continue the programs — including one that buys state and local bonds, another purchasing corporate debt and another that makes loans to small and medium-size businesses. The officials will probably make that decision by early to mid-December, according to a senior Treasury Department official.

The Fed might be inclined to keep the efforts going, but Mr. Mnuchin, whose Treasury Department provides the funding backing up the programs, has signaled that he would favor ending the one that buys municipal bonds. And he is under growing pressure from Republicans to allow all five of the Treasury-backed programs to sunset.

Senator Patrick J. Toomey, a Pennsylvania Republican who could soon lead the Senate Banking Committee, is arguing that the Fed and Treasury do not have the legal authority to extend new loans or buy new securities beyond this year without congressional approval, according to a person familiar with the matter. While that view is disputed by legal experts, Mr. Toomey also believes it

was Congress's intent for the relief programs to end on Dec. 31.

The programs's expiration could come at exactly the wrong moment, as the U.S. faces an expected surge in coronavirus cases this winter and as fiscal stimulus measures that Congress passed in the spring fade. While lawmakers have toyed with passing a new relief bill before next year during the lame-duck session of Congress, President Trump's election loss makes the outcome highly uncertain.

"Cliffing the programs at year-end would be ill advised, opening markets up to a year-end disruption," said Scott Miner, the global chief investment officer at Guggenheim Partners, who expects the programs to be extended.

Mr. Mnuchin has made clear in responses to congressional questioning that he does not favor extending the municipal bond program. While Mr. Mnuchin's comment was specific to that effort, a senior Treasury official laid out reasons for allowing the others to end, mainly centered on a belief that the worst of the economic crisis has passed and the programs should not be a replacement for support from Congress.

But the programs are mostly designed as backup options: The financial terms for buying state and local debt, for instance, are not generous enough to compete in a market functioning well, and the corporate bond program is now making only small-scale purchases. Their main purpose has been to reassure investors that the central bank is there as a last-ditch option if conditions worsen.

Economists and analysts say there is logic in keeping that option open until a vaccine is widespread and the crisis is clearly over — and there is plenty of capacity left in the Fed's programs to buy more debt and make more loans. But the central bank cannot make material changes to the programs' terms to keep them running into 2021 without the Treasury's signoff.

Some Democrats had begun eyeing the municipal program as a backup option in the event that state and local government relief proved hard to pass through Congress. While the program's terms are unattractive now, they could in theory be sweetened under a Biden administration Treasury Department. Taking that program off the table would leave Democrats with fewer options — and give Republicans another bargaining chip in stimulus negotiations.

Mr. Toomey has talked about limiting the backstop programs for months, on the basis that they are no longer needed and might discourage private investment. Politico reported last week that he would favor letting all the programs end.

Lawyers generally agree that the Fed and Treasury can extend the programs without Congress — the way they are structured means that the Treasury has already made loans to the Fed, which then uses that money to insure against risk as it buys bonds and makes loans. The law that provided the funding allows such "existing" loans made from the government appropriation to remain outstanding.

Democrats also disagree with Mr. Toomey's take.

"It's clear that the Fed and the Treasury have the authority to extend the facilities, and they should," said Bharat Ramamurti, a Democratic member of the Congressional Oversight Commission, which oversees the programs. "There is continuing need for municipalities and smaller businesses, and there is a significant chance of market disruption if these facilities are not extended."

Senators Sherrod Brown of Ohio, Elizabeth Warren of Massachusetts, Mark Warner of Virginia and Chuck Schumer of New York — all powerful Democrats — sent Mr. Powell and Mr. Mnuchin a letter last week saying that the law "is clear that these facilities can be extended" on the Treasury and Fed's authority and that "failing to signal the agencies intent now creates undue uncertainty and

threatens the programs ability to promote economic recovery.”

If a coronavirus vaccine is rolled out in the coming weeks, the Treasury Department may be less inclined to extend the programs. Mr. Trump could also block a reauthorization by pressuring Mr. Mnuchin, leaving Mr. Biden with fewer economic stimulus tools at his disposal.

There are some signs that the programs could expire without causing a catastrophe. Markets are functioning normally now, having calmed after the Fed signaled that it would set up the backstops. It might be that investors have overcome the panic of the spring and no longer need a backup option from the Treasury and Fed.

But it is also possible that the comfort and security provided by a Fed backstop is still needed.

Millions of people remain out of work, the service sector continues to be hard hit, and state and local governments are facing budget shortfalls, albeit smaller ones than some had initially projected. Further shutdowns, even localized ones, amid rising coronavirus cases could cause a reversal in risk taking that roils markets once more.

“Some market participants have asserted that the expiration” of the municipal program “may be a nonevent since its existence is not essential for market functioning any more,” market analysts at Citigroup wrote in a recent research note. “These assertions are wrong, in our view.”

Analysts interviewed by The New York Times were divided on what ending the programs could mean for markets. Some believed they could function on their own, with the economy recovering nicely. Others pointed to risks looming ahead and suggested that removing the backstop now would be a bad idea.

“You need to see those facilities extended, particularly if you’re not going to see stimulus,” Matthew Luzzetti, the chief U.S. economist at Deutsche Bank, said in an interview last week. “Just having that backstop has been a really important signal to the market that the Fed is there.”

Asked at a news conference last week whether the programs would be extended, the Fed chair demurred.

“We are just now turning to that question,” Mr. Powell said. “We’ve had a lot of things to work our way through.”

After the news conference, Michael Feroli, an economist at JPMorgan Chase & Company, wrote in a research note that for the programs to be extended, “not only will the Fed Board have to decide that it is needed, but Treasury will also have to be convinced that it is both needed and legal.”

## **The New York Times**

By Jeanna Smialek and Alan Rappeport

Nov. 9, 2020

---

### **[Political Battle Looms Over Fed’s Emergency Loan Programs.](#)**

**Treasury Department faces pressure to allow lending backstops to expire, but some Fed officials fear the move could be premature**

The success of the Federal Reserve's emergency lending programs in stabilizing financial markets is fueling a political battle over whether the programs should be extended.

Divisions over their future are being amplified by partisan gridlock in Congress over whether to provide more economic stimulus. Democrats, looking ahead to President-elect Joe Biden's inauguration in January, see the programs as a potential tool to deliver more aid if Congress doesn't act, while some Republicans are worried about relying on central bank lending powers as a substitute for congressional spending decisions.

The tussle could open a divide between the Fed and the Treasury Department, which have mostly collaborated smoothly this year over providing emergency support after the coronavirus pandemic convulsed Wall Street. The Treasury launched the programs with the central bank in March and April after that turmoil threatened to freeze the flow of credit to small businesses, large companies, cities and states.

[Continue reading.](#)

## **The Wall Street Journal**

By Nick Timiraos

Nov. 10, 2020 2:42 pm ET

---

### **[With the Election Over, Will Covid Stimulus Actually Move Forward?](#)**

**Sen. Majority Leader Mitch McConnell said Congress needs to approve a coronavirus aid package before the end of the year.**

Senate Majority Leader Mitch McConnell on Wednesday said approval of another coronavirus stimulus package before the end of the year would be his top priority when the Senate reconvenes next week. Funding for state and local governments, a sticking point in prior negotiations, could also be considered, he said.

"We need another rescue package," McConnell said during a press conference in Kentucky, where he won reelection. "Hopefully the partisan passions that prevented us from doing another rescue package will subside with the election. And I think we need to do it and I think we need to do it before the end of the year."

The Senate will be back in session Monday, and McConnell said a stimulus deal and omnibus spending bill to keep the government open will be the focus in the coming months. He had earlier suggested that a deal was not likely until early next year.

Talks over another possible coronavirus stimulus bill had stalled for months ahead of the election as Senate Republicans, House Democrats and the Trump administration were unable to come to agreement on a deal. Disagreement about a potential package continued, even as unemployment figures suggested a slow down in the economic recovery. Local and state officials also lobbied for more help, saying they are still spending money to respond to the pandemic, while tax revenues shrank during the economic downturn.

State and local governments will still need financial support even if the coronavirus pandemic

subsidies over the winter, said Mike Leachman, vice president of state fiscal policy at the Center for Budget and Policy Priorities. State and local governments have furloughed or laid off 1.2 million workers, and are likely to face budget shortfalls exceeding \$500 billion over the next two years, he said.

“The economic decline we’ve seen this year is entirely due to the pandemic,” Leachman said. “That’s why state revenues are down and that’s why they need aid.”

But with Republicans less receptive to the idea of providing financial assistance to state and local governments, the results of the election will have implications for any future aid package.

As the vote count in battleground states continued Wednesday, Wisconsin and Michigan were called for Democratic presidential candidate Joe Biden, making it more likely he would beat President Trump. Republicans appeared likely to retain control of the Senate, while Democrats kept the House.

But exactly how those dynamics will play out remain uncertain. In the days leading up to the election, Trump expressed renewed support for more financial aid to help people and businesses affected by the pandemic. It isn’t clear what the president’s position will be if he is voted out of office and asked to consider a new package during a lame duck session.

Before the election, House Speaker Nancy Pelosi also emphasized that she remained far apart from the White House on key points, including financial aid for state and local governments.

McConnell said Wednesday he’d be open to the possibility that state and local assistance is included in a stimulus bill, but he said funding may need to be curtailed to localities that can demonstrate certain levels of need in order to qualify.

“It’s a big item for Democrats and it is not something my side is very fond of because it’s hard to figure out who really needs it and who doesn’t,” McConnell said.

One possibility for approving stimulus initiatives could be to attach measures that both sides agree on to a must-pass spending bill, said G. William Hoagland, senior vice president of the Bipartisan Policy Center. A stopgap spending bill approved in September only keeps the federal government funded through Dec. 11.

“One way or another, something will have to be done in the lame duck session just to keep the government operational,” Hoagland said.

A federal extension of unemployment benefits and funding for Covid-19 testing, tracing and vaccine distribution could all be likely measures for including in a government funding bill, he said. But because funding for state and local governments remains a controversial topic in Congress, Hoagland said it seems unlikely to be tacked on to other legislation.

ROUTE FIFTY

by ANDREA NOBLE

NOVEMBER 4, 2020

---

## **Divided Government May Push the Fed to Go Bigger. Here's What That Might Look Like.**

Gridlock in Washington doesn't seem to be going away, and a divided government probably won't be providing much more help to an economy still ailing from the coronavirus.

That's bad news for the growth outlook. After all, the economy is still about 5% smaller than it otherwise would have been, with roughly 11.6 million Americans still unemployed or underemployed compared with February. And while roughly 20 million Americans have returned to work since April, the recovery hasn't been enough to prevent millions of people being jobless for longer than 26 weeks. Moreover, many of those who have gotten rehired since April are nevertheless in a bad financial situation, given the low level of wages of the jobs that have been added and the depletion of household savings.

[Continue reading.](#)

### **Barron's**

By Matthew C. Klein

Updated November 9, 2020

---

## **States Go After Small Businesses on Amazon - and Sometimes Amazon - for Millions in Back Sales Taxes**

**The Supreme Court in 2018 gave states the power to make new rules for collecting sales taxes online. But back taxes on products sold by small businesses on Amazon's marketplace are still a major point of dispute.**

Amazon is one of the nation's largest retailers in part because of its rapidly growing online marketplace, which allows small business owners to sell their products to a vastly larger group of consumers. In fact, Amazon's marketplace sales more than doubled in just three years, climbing to about \$230 billion in 2019, accounting for more than half of the online giant's business.

But up until last year, many of those sales weren't taxed because the legal requirement to do so was murky. Now, some state governments are trying to recoup those taxes. But whether they're going after Amazon or small business owners themselves for that money depends upon the state.

In California, a state agency is trying to collect back taxes from Fulfilled-By-Amazon (FBA) sellers from as far back as 2012, when Amazon first opened warehouses and fulfillment centers there.

Earlier this year, Philadelphia-based FBA seller Brian Freifelder received a notice from the California Department of Tax & Fee Administration (CDTFA) warning that he could owe California up to \$1.6 million in back sales tax, plus penalties and interest. (After the story made national news, the CDTFA admitted the \$1.6 million estimate was "higher than it should have been," but did not let Freifelder off the hook.)

The CDTFA argues that a business owner's inventory stored for sale in California amounts to having a physical presence there, and therefore triggered the eligibility for those sales to be taxed. The action by the agency has sparked at least two lawsuits, the most recent one filed in September by

the trade organization Online Merchants Guild. The guild, which represents FBA sellers, says those sales taxes should have been collected by Amazon in the first place because Amazon was the retailer. In the marketplace format, it argues, merchants are the equivalent of suppliers because they don't have control over where their products are shipped or sold.

"They [the CDTFA] have no more discretion to go after Amazon sellers than they do Black & Decker for their sales within Home Depot," said Paul Rafelson, executive director of the guild.

But California isn't alone in trying to directly collect from sellers, with Massachusetts, Minnesota, Washington and Wisconsin also sending demands for back taxes in recent years.

In South Carolina, however, the state is targeting Amazon itself. It sued the company for \$12.5 million in unpaid sales tax, interest, and penalties for the first quarter of 2016 alone. An administrative law judge sided with South Carolina, but that ruling is under appeal. The state says Amazon is liable for remitting sales tax for third-party marketplace sales because customers are using Amazon's website and fulfillment services for the purchase.

Amazon said last year the ruling was without merit and hinted at the scale of the potential financial hit if other states followed this tack. "If South Carolina or other states were successfully to seek additional adjustments of a similar nature, we could be subject to significant additional tax liabilities."

Most states sought to clarify the responsibility for collecting taxes after the landmark 2018 Supreme Court ruling that allowed states to collect sales taxes from online sellers, no matter where those merchants are located. In enacting their own sales tax laws, many governments made a distinction between businesses doing direct sales to in-state consumers and those done via online marketplaces such as Amazon or Ebay.

These marketplace facilitator laws, which have been passed in 33 of the 45 sales tax states, make clear that the marketplace platform is responsible for collecting sales taxes—not the merchant who is providing the product. The intent was to keep in place protections for small business owners for whom it may be cost prohibitive to comply with dozens of different sales tax laws. For example, California's law that took effect in 2019 says that remote retailers must register to collect and remit sales tax once their annual sales into the state exceed \$500,000.

But far from clearing things up, those facilitator laws have in some cases added to the confusion. In California, State Treasurer Fiona Ma criticized the CDTFA's approach, calling it "a wrong-headed and retroactive administration of the state's tax law." She argued in a letter to Gov. Gavin Newsom that the state's policy was unfair to small businesses without the ability to comply, while possibly forcing them out of business. Since then, the legislature passed another law that limited the state's look-back period to 2016 for collecting marketplace sales taxes, but that still targets sellers.

Scott Peterson, Avalara's vice president of U.S. tax policy, said that state legislatures can potentially step in to protect marketplace sellers from past tax liability. But in California, that ship has likely sailed.

"They could have let the past be the past," he said. "But instead they doubled down."

## **Route Fifty**

By Liz Farmer

NOVEMBER 12, 2020

---

## **[Hawkins Advisory: Rev. Proc. 2020-44, Advance Guidance for Certain Transitions from IBORs](#)**

The Treasury Department and the Internal Revenue Service have provided advance guidance in Rev. Proc. 2020-44 to allow the implementation of fallback regimes developed by the Alternative Reference Rate Committee and the International Swaps and Derivatives Association to facilitate the orderly transition away from interbank offered rates in certain contracts. This transition is expected to occur at the end of 2021 in accordance with the announcement made by the Financial Conduct Authority, which regulates and oversees the London Interbank Offered Rate. To the extent a contract is modified in accordance with such fallback regimes, under Rev. Proc. 2020-44 the modification will not result in a taxable event to either the investor or the issuer.

The attached Hawkins Advisory describes the provisions of Rev. Proc. 2020-44 as they apply to issuances of tax-exempt bonds.

[Read the Hawkins Advisory.](#)

---

## **[Here Are All The Coronavirus Relief Programs Expiring At The End Of The Year.](#)**

As coronavirus cases surge across the country and new stay-at-home orders threaten further damage to an already fragile economic recovery, millions of Americans will lose crucial federal benefits if Congress can't come to agreement on a new round of stimulus legislation.

[Continue reading.](#)

**Forbes**

by Sarah Hansen

Nov 15, 2020

---

## **[Results of 2020 State and Local Tax Ballot Measures.](#)**

[Read the Tax Analysts report.](#)

November 3, 2020

---

## **[State Ballot Tax Initiative Outcome Mixed; Modest Revenue Effects - Fitch](#)**

Fitch Ratings-New York-11 November 2020: Taxes were on the ballot in a number of states in the 2020 election, and the outcome of these statewide ballot initiatives will have a modest effect on state budgets for the most part, Fitch Ratings says. Voters split in their support of taxes against a

backdrop of weakening state revenues. Measures targeting narrow types of activity or those with specific funding purposes fared better.

Notably, Illinois voters rejected a graduated income tax, narrowing the state's fiscal options. This would have replaced the flat tax provided for in the state constitution and would have generated an estimated \$1.3 billion in state tax revenue in the second half of the current fiscal year. Budget cuts are likely, but the state may also raise revenues, such as choosing to increase the flat income tax rate. Borrowing is already included in the enacted budget, but additional debt without mitigating structural measures could compound pressures on Illinois' IDR of 'BBB-' with a Negative Rating Outlook.

California voters also rejected a constitutional amendment, Proposition 15, or the "split roll." Had it passed, California's Legislative Analyst's Office estimated it would have increased local property taxes by \$8 billion-\$12.5 billion per year statewide beginning in 2025, reducing cost pressure on the state to fund schools.

In Colorado, voters approved the reduction of the state income tax rate to 4.55% from 4.63%, which is expected to reduce state revenues by \$169.8 million in fiscal 2021-2022. Voters also chose to repeal the Gallagher Amendment, which currently limits residential property to no more than 45% of the total statewide property tax base by essentially reducing assessments when residential property values rise. The repeal will prevent an automatic residential property tax cut anticipated in fiscal 2022 and relieve the state from an estimated \$247 million fiscal offset to school districts. Voters also approved a new tax on nicotine vaping products and an increase in existing tobacco taxes, raising fiscal 2021-2022 revenue by an estimated \$175.6 million, the majority of which will initially go to K-12 education. Fitch maintains a 'AA'/Stable rating on the Colorado School Credit Enhancement Program, also known as the School District Intercept Program, or SDIP, and a 'AA'/Stable rating on the Colorado Charter School Moral Obligation Program.

Arizona voters also supported a K-12 tax measure, approving an additional 3.5% tax on higher earners that will raise around \$827 million for schools and teacher salaries. Arkansas voters made permanent a roughly \$300 million 0.5% percent sales tax increase, first authorized in 2012, to fund transportation infrastructure. Oregon increased the cigarette tax by \$2.00 per pack and created a 65% tax on e-cigarettes, generating around \$160 million annually revenues for health initiatives and tobacco cessation efforts. The revenue will nominally alleviate pressures on the general fund's \$22 billion biennial budget.

Gaming initiatives passed in Maryland, Nebraska, South Dakota and most Louisiana parishes will have a marginal effect on tax revenue. Taxes on related activity such as entertainment, food, and lodging may have secondary revenue benefits, although this is unlikely to materialize until the coronavirus is contained.

Recreational cannabis legalization passed in all states where it was on the ballot: Arizona, Montana, New Jersey and South Dakota. In addition, Mississippi approved medical marijuana. While this provides a new tax source for these states, in all cases Fitch anticipates modest effects on state budgets.

Other notable ballot initiatives, including Alaska's Measure 1 regarding fuel-production taxes, have not been called yet.

Contact:

Eric Kim

Senior Director, Head of States Ratings  
+1 212 908-0241  
Fitch Ratings  
Hearst Tower  
300 W. 57th Street  
New York, NY 10019

Sarah Repucci  
Senior Director, Fitch Wire  
+1 212 908-0726

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

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

---

## **TAX - ALABAMA**

### **[Ex parte Department of Revenue](#)**

#### **Supreme Court of Alabama - October 30, 2020 - So.3d - 2020 WL 6374805**

Department of Revenue sought review of Tax Tribunal's judgment in favor of taxpayer, an electronic-bingo operator, in taxpayer's challenge to Department of Revenue's determination that it owed \$75,000,000 in sales taxes and consumer-use taxes for operator's electronic-bingo activities for a particular four-year period.

The Circuit Court denied Department's motion for recusal but did not provide any specific rationale or reasoning. Department petitioned for a writ of mandamus.

The Supreme Court held that:

- Department was entitled to the recusal of trial judge, but
- Department was not entitled to mandamus relief in regard to its request that the case be reassigned.

Department of Revenue was entitled to the recusal of trial judge in Department's appeal of Tax Tribunal's determination that Department's \$75,000,000 assessment of sales taxes and consumer-use taxes for business taxpayer's electronic-bingo activities for a particular four-year period was void; a reasonable person would question judge's impartiality in light of his recusal in earlier challenges to the tax assessments at issue as well as his recusals in other cases involving the same parties and the Supreme Court's removal of him in a case involving the same parties without the issue of recusal having been heard in the circuit court, and nothing in the record on Department's mandamus petition indicated that the reasons for recusal set forth in the previous cases did not remain.

Department of Revenue failed to demonstrate a clear, legal right to mandamus relief in regard its request that its appeal of Tax Tribunal's determination that Department's \$75,000,000 assessment of sales taxes and consumer-use taxes for business taxpayer's electronic-bingo activities for a particular four-year period be reassigned, even though Department was entitled to recusal of the

trial judge; Supreme Court had set forth well-established procedures for a trial judge to request reassignment of a case once he or she recused himself or herself or was disqualified, and the materials before the Supreme Court indicated that the trial judge, when having recused himself in other cases, had followed those procedures.

---

## **[IRS Extends Period for Telephonic Public Hearings for Private Activity Bonds to September 2021: Holland & Knight](#)**

Because of the continuing COVID-19 crisis, the IRS has issued [Revenue Procedure 2020-49](#) (the Revised Guidance), which extends the period during which remote telephonic hearings qualify as “public hearings” required for private activity bonds to Sept. 30, 2021. Originally, such telephonic hearings could not be held past Dec. 31, 2020.

The IRS previously released guidance in Revenue Procedure 2020-21 (the Prior Guidance), allowing remote telephonic hearings to qualify as “public hearings” required for private activity bonds under Section 147(f) of the Internal Revenue Code of 1986, as amended. (See Holland & Knight’s previous alert, [“IRS Provides Procedures for Telephonic Public Approval Hearings for Private Activity Bonds,”](#) May 5, 2020.)

To qualify, the hearing must be held by teleconference accessible to the residents of the approving governmental unit by calling a toll-free telephone number. That toll-free number and the procedures for calling in with comments should be published in the public notice for the hearing. In addition to this telephonic access, the approving governmental unit may also offer additional access to the hearing by other telephone numbers or by internet-based meeting technology.

The Revised Guidance applies only to hearings held telephonically – thus internet only or other non-telephonic hearings do not qualify.

The Revised Guidance applies to public hearings held from May 4, 2020, through Sept. 30, 2021.

**Holland & Knight LLP**

November 6, 2020

---

## **[Pelosi Touts Possible Bipartisan Cooperation on Infrastructure After Election.](#)**

**The House speaker also said she has no plans to stop pressing for a big coronavirus relief deal. Meanwhile, at least one top Senate Republican also indicated it’s possible Democrat and GOP lawmakers could come together on a public works plan.**

U.S. House Speaker Nancy Pelosi on Friday pointed to a large infrastructure package as an area where Democrats and Republicans might cooperate with Democrat Joe Biden in the White House, but Republicans maintaining control of the U.S. Senate.

Pelosi also rejected the idea of Democrats downsizing their ambitions for another round of coronavirus relief in order to strike a compromise with Republicans, and specifically emphasized the need for more federal financial assistance to state and local governments.

"No, it doesn't appeal to me at all," Pelosi replied when asked during a press conference about her openness to a scaled-down relief bill.

She noted that, since the pandemic began, there have been hundreds of thousands of jobs cut in the state and local public sector "because of the funds that have been used to address the virus and lost revenue."

Democrats have been pushing in recent weeks for a roughly \$2 trillion package. A bill they pushed through the House in October included upwards of \$400 billion for states and localities.

Biden won the presidency on Saturday, clinching the lead in key battleground states, and was close to winning when Pelosi spoke on Friday.

Exactly which party will control the Senate is still up in the air. Partisan control in the closely divided Senate looks like it likely will hinge on a pair of runoff elections in Georgia in January.

In the House, Democrats are expected to maintain their majority, despite losing seats.

At least one key Republican on Friday also raised the possibility of infrastructure legislation—Sen. Lindsey Graham, of South Carolina, who after his reelection this week noted that he is in line to chair the Senate Budget Committee if the GOP keeps control of the chamber.

With Republicans in charge, Graham warned, "the agenda coming out of the House is dead on arrival in the Senate." But he also said there's "plenty of space to find common ground on infrastructure."

"I think there's a lot of bipartisanship for roads and bridges and ports," Graham told reporters during a video call. "We need to redesign the Highway Trust Fund because there are less cars on the road using gasoline and the Highway Trust Fund is based on gas taxes."

Pelosi characterized House Democrats "Moving America Forward" proposal from earlier this year—a \$1.5 trillion package of bills—as a possible starting point for talks about infrastructure and said it was similar to plans that the Biden campaign has outlined.

"As we go forward with an infrastructure bill, that is usually not partisan," she said.

During his time in office, President Trump repeatedly expressed an interest in a large infrastructure package and discussed this possibility with Pelosi and other Democrats at times. But a deal has proved elusive, with funding a key sticking point.

Pelosi blamed the president for a lack of leadership on the issue, saying that he talked up the idea of a sweeping public works plan only "until it came time to make the tough decisions about paying for it and the rest and then he stomped out of the room."

Republican leaders in the Senate have generally been cool toward the idea of passing a massive new public works package during Trump's tenure and never lined up behind a funding proposal.

The U.S. Chamber of Commerce this week highlighted infrastructure and another round of coronavirus stimulus as two of its top post-election priorities. The Chamber has backed the idea of a new federal infrastructure investment program previously.

Graham, who won reelection defeating Democratic challenger Jaime Harrison by about 10 percentage points, drew attention at the end of the week for aligning himself with Trump as the

president made unfounded allegations about voter fraud.

But the South Carolina senator said Friday that he will be willing to look for ways to work with Biden on certain issues if the Democrat wins. Graham also said he wants to move ahead with another stimulus bill before January, prior to the next presidential term beginning.

"I've been in the camp of going big," he said of the virus relief legislation. "We need a big package." But he also acknowledged that some fellow Republicans don't agree with him on this.

Republicans in recent months have been resistant to the idea of funneling large additional sums of federal aid to state and local governments as part of further coronavirus relief.

ROUTE FIFTY

by BILL LUCIA

NOVEMBER 6, 2020

---

## **[GAO Says Oversight of Opportunity Zones Could Improve.](#)**

Congress should give Treasury the authority to collect data and report on the performance of Opportunity Zones, in collaboration with other agencies, so the program can be better evaluated for outcomes such as its effect on employment or housing in the zones, the Government Accountability Office said in a report released November 9.

[Read the GAO Report.](#)

---

## **[Top Questions to Ask Before Investing in an Opportunity Zone Fund.](#)**

What are the biggest questions you should ask before investing in an Opportunity Zone fund?

With many investors facing a year-end deadline for rolling over their capital gains into an Opportunity Zone investment, know which questions to ask any fund manager before writing that big check.

[Continue reading.](#)

**opportunitydb.com**

By Jimmy Atkinson

November 11, 2020

---

## **[Transforming Municipal Water Performance.](#)**

**Exploring the economic challenges of running a municipal water utility during a pandemic**

Publicly owned and operated water utilities are increasingly running up against tight budgets, debt obligations, and other barriers to investment as user charges, municipal bonds and traditional financing tools fail to keep up with the level of need.

While governmental departments provide some financial support for municipal water infrastructure, most water investment is locally driven, and municipalities must prioritize their improvements based on a specific set of economic, political, and environmental factors—often easier said than done. A municipal utility's ability to generate revenue is far more limited than that of an investor-owned utility and many municipalities do not have the capacity to take on additional debt. From complying with new regulatory requirements to preparing for the next major storm, municipal utilities must carefully weigh local needs when launching new investments.

Utilities must overcome several financial hurdles to address aging pipes and water mains, as well as wastewater treatment and transport concerns, including rising operating costs and unpredictable revenues that can make it difficult to maintain self-sufficiency and make long-term capital plans. Meanwhile, many municipal utilities are dealing with a heavy debt burden, and are underfunded, with many not investing sufficiently in their networks to keep up with decaying infrastructure.

The gap continues to grow between water and wastewater capital needs and historical public and private capital investment. Meanwhile, regulatory pressures over water quality increase, and environmental burdens of severe storms or severe droughts become more frequent. All of these combine to intensify the challenges facing cash-strapped municipal utilities.

With these challenges providing the backdrop, the COVID-19 pandemic is now providing additional financial performance challenges for municipal water utilities. A recent report prepared for the American Water Works Association and the Association of Metropolitan Water Agencies estimated that the aggregate financial impact of COVID-19 on drinking water utilities in the U.S. alone will likely be approximately \$13.9 billion, which represents an overall 16.9% financial impact on this sector. These new pandemic-related financial impacts are the result of two unexpected impacts. First, increased costs due to operational challenges needed to handle social distancing and remote working. Second, utilities are anticipating reduced revenue due to lower non-residential water demand during lockdowns, due to some customers' inability to pay their bills, and also the no-disconnect policy followed by many utilities during the COVID-19 crisis.

### **Tackle Performance Challenges With Innovation**

Pandemic challenges aside, many water utilities were already struggling, focusing on yesterday's work without the capacity to plan ahead. Few have proactive business models in place, and even fewer are able to invest for performance.

A few years ago, Global Water Intelligence (GWI) launched Leading Utilities of the World (LUOW), a global network of the world's most successful and innovative water and wastewater utilities. The goal of the group is to drive performance across the water sector by recognizing achievement and celebrating those successes while inspiring others in the industry. For example, LUOW member Dubai Electricity & Water Authority's AMI project helped the utility save 1.4 billion gallons of water in 40 months and increased revenue by \$13.7 million USD.

It is not just economics that separates the successful utilities from those struggling to keep up. The winning combination, as evidenced by LUOW members, is leadership and innovation. San Francisco Public Utilities Commission, faced with the multiple challenges of earthquakes, aging infrastructure and droughts, diversified its water resources through four different initiatives: conservation, groundwater, recycled water, and non-potable water. As a result of these initiatives, per capita

consumption is now averaging only 40 gallons of water per day per person.

Other municipal utilities are facing these challenges through integrated water resource management (IWRM), which emphasizes collaboration and information sharing to bridge the gap between different public and private shareholders while improving financial and environmental outcomes.

In some areas, there are efforts being made to encourage “utility strengthening through consolidation.” For example, California State Water Resources Control Board is encouraging “water partnerships” (local resource sharing, physical or managerial consolidation, or full regionalization) to benefit from economies of scale and to save meager resources that can then be spent on necessary improvements, funding reserves or paying down debts.

Further, municipalities and municipal associations often contract out water and wastewater services to private sector companies such as SUEZ, Veolia and Inframark. In these cases, these companies provide scalable solutions depending upon the need of the municipal utility through public-private partnerships and comprehensive asset management contracts. Through this type of contractual arrangement, municipalities can outsource the management and operation of their water and wastewater systems while retaining control, ownership of their assets, and rate-setting authority.

It is this same long-term planning and execution of innovative approaches to performance management that have positioned some municipal water utilities to weather the impacts of the COVID-19 pandemic better than others. While the impact of the pandemic will vary for individual water utilities depending upon its impact on their customers, with utilities heavily associated with C&I and institutional customers, high unemployment, or already stressed cities likely to take a greater financial hit, the water utility sector has had previous practice dealing with periods of stress due to droughts. In an American Water Works Association-sponsored webcast in mid-May focused on the financial impacts of the pandemic, Helen Cregger, Moody’s vice president and senior credit officer of public finance, noted that such periods of stress have prompted utilities to build cash reserves and increase fixed charges, and these will help them ride out this unexpected storm.

### **Embrace Electric Utility Strategies to Improve Water Utility Performance**

The COVID-19 crisis has utilities across the board looking at ways in which to conserve capital, and it is here that water utilities can look to the electric utility industry for inspiration. For a municipal water utility with economic challenges, the key first step is to focus on making more of what is on hand: by operating and maintaining existing assets by and taking a more analytical approach. This can unlock new capacity to do new work. By better managing existing assets utilities can alleviate or postpone massive capital expenditures on new infrastructure.

As a second step, municipal water utilities can also embrace the asset and network management techniques being adopted by electric utilities.

Through network sensors, IoT, and real-time analysis of the data provided, water utilities can increase their understanding of their network assets. Adding sensors and other IoT devices will allow the utility to access first-hand information from the field, clarify asset health, and feed that data back into planning and maintenance systems faster, to better optimize asset performance and reduce incidences of failure.

Using a network management system and its modeling capabilities (as electric utilities have been doing for years) to create a water network model will provide the utility with a better understanding of flow and potential leakage areas within the system, allowing for better maintenance planning.

As a third step, municipal water utilities need to seriously consider moving their enterprise applications for asset, metering, and billing to the cloud, either alone or in tandem with other neighboring utilities in a resource-sharing, multi-tenant arrangement.

The cloud offers flexibility and modularity, providing a scalable, reliable, and agile platform for every utility's core business. It is a much quicker route to new features and functionality than on-premises implementations, allowing utilities to cut costs and remove the upgrade burden, allowing them to repurpose budgets and staff to focus on value creation.

WATER & WASTE DIGEST

BY KATE ROWLAND

NOV 11, 2020

---

## **COVID-19 Recovery: WIFIA's Role**

**As part of the nation's COVID-19 response, federal policymakers should consider expanding and repurposing existing federal financing programs like U.S. EPA's Water Infrastructure Finance and Innovation Act (WIFIA) Loan Program.**

In many ways, the economic consequences of the COVID-19 pandemic are just beginning for state and local governments and public-sector infrastructure agencies. They will face the direct effects of the prolonged shutdown on revenues and expenditures while being responsible for economic and social recovery in their communities. These challenging conditions will likely persist for years.

Even for those governments and agencies in good long-term financial shape, financing assistance may be critical to help manage the massive budget dislocations caused by this unprecedented crisis. Such assistance is especially effective for infrastructure agencies to keep major projects from being delayed or canceled due to unexpectedly lower revenue expectations.

The federal government's role in the pandemic's economic recovery is well recognized. But plans for specific federal financing programs are far from finalized. Many in Congress are calling for the \$500 billion Municipal Liquidity Facility (established by the Federal Reserve in the CARES Act) to be amended to offer cost-effective loans. This concept is included in several bills recently passed or proposed in the House, but full enactment is still a distant prospect in the current political environment. And even if new sources of federal credit were established, the design and implementation of large-scale lending programs is a major task. It can't be accomplished overnight.

[Continue reading.](#)

**Water World**

by John Ryan

Nov 11th, 2020

---

## **SEC Commissioner Lee: SEC Must Address Systemic Financial Risk Posed by Climate Change - Cooley**

At last week's PLI annual securities regulation institute, SEC Commissioner Allison Lee gave the [keynote address](#), *Playing the Long Game: The Intersection of Climate Change Risk and Financial Regulation*. She began her remarks with the pandemic as metaphor: a global crisis that, before it struck, was "understood intellectually to be a serious risk," but not fully appreciated as something we really needed to worry about. Now, we have experience of a crisis, no longer viewed "antiseptically through our TVs or phones, but firsthand as it unfolds in our homes, families, schools, and workplaces—not to mention in our economy. Seemingly theoretical risks have become very real." Another dramatic risk that looms even larger with potential for more dire consequences is the topic of Lee's remarks: climate change. According to a 2018 study by scientists in the U.K. and the Netherlands, the "point of no return" for achieving the goal of two degrees Celsius by 2100 set by the Paris Accord may arrive as soon as 2035. To be sure, the lesson from the pandemic is "not to wait in the face of a known threat. We should not wait for climate change to make its way from scientific journals, economic models, and news coverage of climate events directly into our daily lives, and those of our children and theirs. We can come together now to focus on solutions." And while this is hardly Lee's first rodeo when it comes to advocating that the SEC mandate climate risk disclosure, it seems much more likely now, with the imminent change in the administration in D.C., that the SEC may actually take steps toward implementing a regulatory solution.

Acknowledging that the SEC does not make policy to address climate change, Lee highlights the role the SEC does play—protecting investors, facilitating capital formation and maintaining fair, orderly and efficient markets—and how they all intersect with climate change. At a high level, financial regulators, including the SEC, must understand and, "where appropriate, address systemic risks to our economy posed by climate change. To assess systemic risk, we need complete, accurate, and reliable information about those risks. That starts with public company disclosure and financial firm reporting, and extends into our oversight of various fiduciaries and others. Investors also need this information so they can protect their investments and drive capital toward meeting their goals of a sustainable economy."

According to Lee, there is a "growing consensus that climate change may present a systemic risk to financial markets," a view shared by, for example, the Task Force on Climate-Related Financial Disclosure (TCFD) (see [this PubCo post](#)), and the Market Risk Advisory Committee to the Commodity Futures Trading Commission (see [this PubCo post](#)), among others. (Lee views "systemic risk" as risk "characterized by the following features: (1) 'shock amplification' or the notion that a given shock to the financial system may be magnified by certain forces and propagate widely throughout; (2) that propagation causes an impairment to all or major parts of the financial system; and (3) that impairment in turn causes spillover affects to the real economy.") To the extent that asset prices fail to fully incorporate risks, systemic shock becomes more likely; there is clearly evidence, in her view, that climate risks have not been priced in, especially for "long-dated assets, utilities, commercial mortgage-backed securities, and potentially municipal bonds, among others." In the event of major climate-related events, markets may discover these anomalies, leading to "abrupt and disruptive re-pricing." For example, some have highlighted the "risks of extreme weather events to the creditworthiness of state and local issuers in the municipal bond market, risks of hurricane and flooding to the commercial real estate market, and risks of aging infrastructure in conjunction with hurricanes and wildfires to the electric utility sector."

But these disruptions will not necessarily be cabined within those sectors; rather they can spread throughout the financial system in expected and unexpected ways. The Bank for International Settlements, she observes, has identified climate risk as a "green swan" event—"a colossal and

potentially irreversible risk of staggering complexity.” Climate risk differs from the better-known “black swan” in the level of its complexity—“a new type of systemic risk that involves interacting, nonlinear, fundamentally unpredictable, environmental, social, economic and geopolitical dynamics, which are irreversibly transformed by the growing concentration of greenhouse gases in the atmosphere.”

These disruptive effects compound each other, potentially affecting non-climate related vulnerabilities, such as “historically high levels of corporate leverage, and the effects of the COVID-19 pandemic which has depleted household wealth and bank balance sheets, and created more debt. Climate related shocks could further magnify these vulnerabilities.” And these effects may well be irreversible. Because of the potential for a climate-induced “overall shock to the global economy with systemic implications,” it is “imperative for the SEC to focus on climate risk as systemic risk, and coordinate with domestic regulators through the Financial Stability Oversight Council, and with international regulators through the Financial Stability Board’s Standing Committee on Assessment of Vulnerabilities, to monitor and address this risk.”

The starting point, she maintains, must be a “clear-eyed analysis of accurate, reliable data,” and there has been an unprecedented demand by investors for climate-related and ESG-related disclosure. Beyond so-called “impact” investing, she observes, climate and other ESG risks and metrics have become significant, decision-making drivers in a variety of sustainable investment strategies, as well as in “traditional investment analyses designed to maximize risk-adjusted returns on investments of all types. They represent a core risk management strategy for portfolio construction....The bottom line is that businesses now actively compete for capital based on ESG performance, and that competition needs to be open, fair, and transparent.”

How do we get there? Through “uniform, consistent, and reliable disclosure.” Some disclosure has resulted from private ordering, but, as she has contended previously (see, e.g., [this PubCo post](#), [this PubCo post](#) and [this PubCo post](#)), “some level of regulatory involvement [is needed] to bring consensus, standardization, comparability, and reliability.”

To illustrate, Lee looks to the role of banks, both in financing fossil fuel industries and in the opportunity to finance a shift toward a lower carbon economy, considered by all accounts as “a heavy lift.” She advocates that the SEC work with “market participants toward a disclosure regime specifically tailored to ensure that financial institutions produce standardized, comparable, and reliable disclosure of their exposure to climate risks, including not just direct, but also indirect, greenhouse gas emissions associated with the financing they provide, referred to as Scope 3 emissions. There is a concentration of risk in the financial sector that is not readily ascertainable except through Scope 3 emission disclosures.” With appropriate resources, the SEC should take on the challenge of implementing appropriate regulatory action as it relates to standardized disclosure requirements.

The SEC must also address climate risk in the context of oversight of funds and their advisers, credit rating agencies and accounting standards. Clear disclosure is also necessary, in Lee’s view, in connection with funds marketed as “green” or “sustainable.” What does the fund mean by these terms and is the fund implementing a strategy that is consistent with that disclosure? Standardized company ESG disclosure would help, she believes. In addition, she suggests that the SEC consider requiring advisers to maintain and implement policies and procedures governing their approach to ESG investment. She also advocates that the SEC encourage increased transparency at credit rating agencies regarding how climate and other ESG factors are weighted when incorporated into credit ratings.

Lee also asks whether the FASB should look at climate risk in the application of GAAP as the IASB

has done in issuing guidance addressing how existing IFRS requirements interact with climate-related risks, and identifying how climate-related risks may need to be reflected in financial statements, including in connection with asset impairments, asset valuations and useful life, contingent liabilities and expected credit losses.

In conclusion, she again alludes to the pandemic as an example of what not to do, advocating that we not wait until the crisis is upon us to respond, but instead “move forward with considered, informed rule-making and other initiatives in this space.”

by Cydney Posner

November 10, 2020

**Cooley LLP**

---

## **[Climate Change Lawsuit Reaches the US Supreme Court.](#)**

The US Supreme Court recently [granted certiorari](#) in an important climate change lawsuit, *BP P.L.C. v. Mayor and City Council of Baltimore*. The lawsuit pits the Mayor and City of Baltimore against twenty-six multinational oil and gas companies that Baltimore claims are responsible for climate change. Baltimore alleges that the companies contributed to climate change by producing, promoting, and (misleadingly) marketing fossil fuel products long after learning of the climate-related dangers associated with them. Specifically, Baltimore argues that the companies engaged in a “coordinated, multi-front effort” to conceal their collective knowledge of climate change. Also that the companies discredited the “growing body of publicly available scientific evidence,” and worked to “undermine public support for regulations of their business practices.” Baltimore seeks relief for “climate change-related injuries.”

[Continue Reading](#)

By Brent Owen on November 11, 2020

**Squire Patton Boggs**

---

## **[Denver Supportive Housing Social Impact Bond Initiative: Housing Stability Payments.](#)**

### **Abstract**

In February 2016, the City and County of Denver and eight private investors closed on the city’s first social impact bond, an \$8.6 million investment to fund a supportive housing program for 250 of the city’s most frequent users of the criminal justice system. The city will make outcome payments over five years based on the initiative’s goals of housing stability and a decrease in days spent in jail by participants. This brief details the fourth assessment of housing stability payment outcomes and interim housing stability outcomes for the program.

[Read the study.](#)

## The Urban Institute

by Sarah Gillespie, Devlin Hanson, Alyse D. Oneto, Patrick Spauster, Mary K. Cunningham, Mike Pergamit

November 13, 2020

---

### **San Francisco Sees \$116 Million Gap as Revenue Falls Short.**

- **Higher than expected property taxes helped soften the blow**
- **Voter-approved taxes and changes added \$11 million to budget**

San Francisco's revenue is falling short of forecasts as the economy recovers more slowly from the coronavirus pandemic than the technology hub expected, creating a \$116 million budget shortfall just a few months into its fiscal year.

In a report issued Tuesday by city Controller Ben Rosenfield, revenue is forecast to be \$144 million less than expected in the adopted budget for the year that began in July, largely due to drops in business and hotel taxes. Still, higher than expected property tax collections are softening the blow and boosting reserves by \$21 million.

The city already raided reserves to help plug a \$1.5 billion deficit over the next two years due to the pandemic. Rosenfield's update comes a week after city voters approved new business taxes and changes, which will add a net \$11 million to the budget. Mayor London Breed in October had warned that failure of the measures could lead to service cuts. The budget for the fiscal year was enacted that month, later than usual to deal with the uncertainty amid the pandemic, and the city is already seeing changes to its forecast.

San Francisco's predicament is true for other local governments across the country dealing with the uncertainty of the outbreak and resulting shutdowns. Municipal officials are also hoping for a federal stimulus package, but Congress remains in gridlock. Chicago is planning to raise taxes and lay off workers to plug its record \$1.2 billion gap, and New York City is using \$4 billion in reserves, and warning it may have to lay off as many as 22,000 city workers if it doesn't get federal aid or state approval for borrowing to help close its \$9 billion shortfall.

"The level of uncertainty regarding city revenues and expenditures remains extraordinarily high, driven by the economic and financial impacts of the public health emergency," Rosenfield wrote.

Indeed, the city on Tuesday said it will temporarily roll back the reopening of indoor dining and reduce the capacity of fitness center and theaters after a spike in Covid cases.

By tapping reserves, San Francisco, a city and county of about 880,000 residents, avoided layoffs but the Board of Supervisors approved scheduled raises for city workers against the wishes of the mayor, who called it irresponsible. The two-year general fund budget is about \$6 billion per year.

Rosenfield told the Board of Supervisors Tuesday that another concern is the availability of funds from the Federal Emergency Management Agency, which the city relies on for temporary housing for those at risk of contracting the coronavirus, such as those over age 65 or those who have qualified medical conditions.

The FEMA program, which is dependent upon the executive branch continuing it, can be cut off with 30 days' notice, and is only authorized month to month. "So I don't say that to scare anybody, but only to note that I think there is a significant risk that FEMA will fall away at some point," Rosenfield said.

Rosenfield's report assumes a vaccine will be available in spring 2021, and widespread adoption by December 2021. It expects a slower rebound in travel and tourism than previously forecast, not returning to pre-pandemic levels until the fiscal year that begins in July 2025.

Another key source of uncertainty is telecommuting, because even if offices can return to full capacity — which they currently aren't — it's unknown if managers will continue to allow employees to work from home as much as possible, according to the report. If remote work returned to its pre-pandemic levels, the city would get \$190 million more in business revenue. San Francisco expects to collect \$3.7 billion in total receipts, down from \$4.4 billion the previous year, according to the report.

## **Bloomberg Economics**

By Romy Varghese

November 11, 2020, 6:00 AM PST Updated on November 11, 2020, 10:35 AM PST

— *With assistance by Joyce Cutler, and Henry Goldman*

---

## **[What You Need to Know for the Upcoming LIBOR Transition: Best Practices and Guidance - Ballard Spahr Podcast](#)**

In this episode we'll be discussing the upcoming transition from the use of LIBOR as the principal benchmark interest rate in lending transactions. We'll look at the emerging alternatives, their implications and consequences, and the actions that should be considered by the many affected market participants to manage through the transition.

Our guest is Joyce Frost, Co-Founder and Partner at Riverside Risk Advisors LLC, an independent advisory firm with expertise in interest rate, currency, equity and structured credit derivatives. Within Riverside, she is also the Founder of LiborXchange, which helps clients navigate the LIBOR transition, strategically and defensively. Leading this discussion is Joyce Gorman, Senior Counsel in the Firm's Washington, D.C. office and a member of the Firm's Finance Department.

[Listen to podcast.](#)

[View recording transcript.](#)

**Copyright © 2020 by Ballard Spahr LLP.**

November 11, 2020

---

## **[New Jersey Joins Hawaii in Pandemic Credit Downgrades, but Their Bonds](#)**

## [Have Diverged.](#)

New Jersey just became the second state to get a credit-rating downgrade since the coronavirus pandemic struck, following Hawaii's downgrade earlier this year.

But New Jersey's bond yields have declined since then, even though rating downgrades typically drive bond prices lower and boost yields.

Last week New Jersey's 10-year general obligation bond—debt backed by a state's pledge to use its taxing power to repay, rather than a specific project or revenue stream—yielded 1.82%. At Tuesday's close, the bond yielded 1.77%, even though the state's credit was downgraded Friday to BBB+, three tiers above junk, by S&P Ratings.

In contrast, Hawaii's bond yields have climbed since its downgrade by Moody's in August. Its 10-year benchmark general-obligation bond yielded 1.1% on Tuesday, according to Bloomberg data, compared with 0.8% shortly before its downgrade.

Some of New Jersey's minor bond-price gains could be the result of the downgrade not being as severe as investors feared. But it could also be the result of optimism around the recent U.S. presidential election and a vaccine.

Yet Hawaii's finances—which are tied to the state's tourism industry—could be helped by a vaccine more than New Jersey's. Earlier this year, Hawaii said its tourism revenues aren't expected to get back to normal before 2024, according to Moody's. But it seems reasonable to think that an effective and widely distributed vaccine would move up that date.

New Jersey's problems, on the other hand, are more structural, as S&P Ratings pointed out in its Nov. 6 note downgrading the credit.

"Until the recent recession, New Jersey had been making progress on closing its...deficit," the analysts wrote. "However, this progress depended on steady revenue growth during the long previous economic expansion. In recent years, most of the state's revenue growth has gone toward increasing New Jersey's annual pension contributions."

And the possibility of a divided government could constrain the amount of federal aid New Jersey can obtain. That likely won't be determined until early January, when Georgia hosts two runoff elections.

In other words, if New Jersey's credit looks better after the election and vaccine, Hawaii's should look much better.

### **Barron's**

By Alexandra Scaggs

Nov. 11, 2020 9:43 am ET

---

## [MSRB Compliance Corner: Fall 2020](#)

[Read the Newsletter.](#)

---

## **MSRB Seeks Board of Directors Applicants.**

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization established by Congress to safeguard the \$4 trillion municipal securities market, will solicit applications for four positions on its Board of Directors for the 2022 fiscal year. Selected candidates will be elected to four-year terms beginning October 1, 2021, where they will have the opportunity to oversee the organization's strategic initiatives to support an evolving market through effective regulation, modernized technology and big data.

"Our goal is to create a Board that is diverse, inclusive and reflective of the wide variety of perspectives that contribute to the field of public finance. To help encourage individuals to apply, we are soliciting applications earlier and keeping the application window open for longer than in prior years," said Board member Caroline Cruise. Cruise serves as chair of the Board's Nominating Committee, which is focused exclusively on the nominating process for new members now that the Board has split its Nominating and Governance Committee into two separate committees.

The Board is charged with setting regulatory policy, authorizing rulemaking, enhancing market transparency systems and overseeing operations for the organization. The Board is currently overseeing MSRB strategic initiatives that include modernizing the MSRB Rule Book to reduce compliance burdens; modernizing and enhancing the free Electronic Municipal Market Access (EMMA®) website and related market transparency systems; and delivering value to the municipal market through data. Board members are compensated for their service.

### **Board Composition**

The FY 2022 Board will have 15 total members as the Board transitions to a smaller size. The reduced size of the Board is one of several significant governance enhancements developed during the Board's special review of governance in FY 2020, which also resulted in tightened standards of independence for public members and a lifetime service limit for Board members. [MSRB Rule A-3](#) outlines requirements for all applicants to the Board, including specific eligibility requirements to serve as a public or regulated Board member.

The Board will elect two public and two regulated representatives to join a Board that will consist of eight members who are representatives of the public, including investors, municipal entities and other individuals not regulated by the MSRB and seven members from firms that are regulated by the MSRB, including representatives of broker-dealers, bank dealers and non-dealer municipal advisors. With respect to the two public member positions, the MSRB is particularly interested in individuals employed by state and local issuers. With respect to the two regulated member positions, the MSRB is required to select at least one municipal advisor who is not affiliated with a broker-dealer or bank dealer firm.

Qualified individuals representing the diversity of the country and a broad array of market perspectives and organizations are encouraged to apply for membership on the Board. All applicants must be knowledgeable of matters related to the municipal securities market.

### **Application Details**

The application form will become available on the MSRB Board of Directors Application portal beginning December 1, 2020 and accepted through February 5, 2021. [Download a copy of the application form for reference.](#) Additional details on the Board application process are available on the MSRB's website [here](#). Questions regarding the application and selection process should be

directed to Sara Ahmadzai, Senior Manager, Corporate Governance and Board Administration, at 202-838-1341 or [sahmadzai@msrb.org](mailto:sahmadzai@msrb.org).

Date: November 12, 2020

Contact: Leah Szarek, Interim Chief External Relations Officer  
202-838-1500  
[lszarek@msrb.org](mailto:lszarek@msrb.org)

---

## **[Take an Active ETF Approach to Navigate the Municipal Bond Market.](#)**

Fixed-income investors can consider an opportunity to access tax-exempt income while actively managing credit and duration exposures through a short duration municipal bond exchange traded fund strategy.

In the recent webcast, [No Time for Passive: The Case for Active Muni Bonds](#), Samantha Azzarello, Executive Director, Global Market Strategist; J.P. Morgan Asset Management, outlined the current markets we find ourselves in with both daily increases in coronavirus cases and fatalities. Meanwhile, the economy is still trying to recover its former glory prior to the Covid-19 pandemic, with 11.4 million regained employees on total nonfarm payrolls after the economy suffered a loss of 22.2 million. We see that the leisure and hospitality sector has been one of the worst hit areas, followed by transportation, utilities, education, health services, business services, and other services industries.

Looking ahead, Azzarello argued that we are still on a path to recovery as supportive monetary and fiscal policies help lift the economy. Consensus analyst estimates reveal a return to positive earnings growth ahead for the S&P 500.

Richard Taormina, Managing Director, Head of the Tax Aware Strategies Team, J.P. Morgan Asset Management, also highlighted the strong demand and record supply in the fixed-income market as more investors look to diversify their bond portfolios in a quickly changing environment. Taxable supply continues to be strong with issuance up 200% year-over-year. Tax-exempt issuance, though, is slightly lower than last year. Fund inflows have reversed the \$45 billion in outflows across the March and April months and now show a positive \$20.2 billion year-to-date positive inflows.

Taormina noted that short rates will remain low as the yield-curve steepens ahead. The curve on 2 to 10 year bonds are at their steepest since 2018 after hovering near record lows earlier around March.

Meanwhile, Taormina argued that munis are still an attractive segment of the market for fixed-income investors when comparing the triple A-rated munis to U.S. Treasuries.

As a way to help better control their fixed-income duration exposure, investors can look to the actively managed JPMorgan Ultra-Short Municipal ETF (Cboe: JMST) to go down the yield curve and better manage risk. The JPMorgan Ultra-Short Municipal ETF tries to generate a high level of current income exempt from federal income tax as is consistent with the relative stability of principal. The portfolio primarily consists of investment-grade fixed, variable, and floating-rate municipal securities exempt from federal income taxes.

JMST comes with a 0.51% 30-day SEC yield or a 0.86% tax-equivalent 30-day SEC yield for those in the highest income bracket. The fund also has a 0.74 year effective duration and a 0.18% expense

ratio.

The JPMorgan Ultra-Short Municipal ETF focuses on 0 to 1 year debt maturities, which make up about 74% of the portfolio. Compared to the benchmark Bloomberg Barclays 1-year Municipal Bond Index, it is slightly underweight to the top-rated muni debt securities since it holds a 16% position in non-rated debt, which may help the fund better generate yield opportunities. The ETF is also more heavily focused on local general obligation debt, hospital bonds, and housing-related bonds, as compared to the benchmark.

## ETF TRENDS

by MAX CHEN on NOVEMBER 11, 2020

---

## **[NEWPF Webinar: Bringing Racial Equality into the Municipal Finance Industry](#)**

Following our powerful session with CT Treasurer Shawn Wooden in September, NEWPF invites you to the first of its series on the promotion of racial justice in the Municipal Finance Community.

What reforms are needed?

How will they be measured to ensure meaningful results?

**Date:** Thursday, November 19, 2020

**Time:** 12:00 – 1:30 pm

**Format:** Zoom webinar

Join our distinguished panel for a thought-provoking discussion.

### **Panelists:**

Gary Hall, Partner – Head of Investment Banking (Infrastructure & Public Finance), Siebert Williams Shank & Co., LLC

Sean McCarthy, Managing Director and Chief Executive Officer, Build America Mutual

Paulette Brown, Partner, Locke Lord LLP, former President of the American Bar Association

Neene Jenkins, Executive Vice President, J.P. Morgan Chase

### **Moderator:**

Ritta McLaughlin, Board Member, Association of Public Finance Professionals of District of Columbia, Maryland and Virginia

Use the link below to register for this webinar. You will receive a confirmation email from Zoom with your login information.

**[CLICK HERE TO REGISTER FOR THE ZOOM WEBINAR](#)**

---

## **CSMA Reporter's Roundtable.**

### **Reporter's Roundtable - Thursday, Nov. 19 @ 1pm PST**

**Moderator:** Marie Autphenne, Managing Director Municipal Credit, Raymond James

**Panelists:** Marisa Lagos, California Politics & Government Desk Reporter at KQED; John Myers, Sacramento Bureau Chief, Los Angeles Times

Marisa and John will join us for our annual Reporter's Roundtable; They'll discuss key takeaways from the CA November election results and other current topics.

You are invited to a Zoom webinar.

**When:** Nov 19, 2020 01:00 PM Pacific Time (US and Canada)

**Topic:** CSMA: Reporter's Roundtable

#### **Register in advance for this webinar:**

[https://us02web.zoom.us/webinar/register/WN\\_acWY\\_aFHT8KKsWHWvUrFYg](https://us02web.zoom.us/webinar/register/WN_acWY_aFHT8KKsWHWvUrFYg)

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

Thanks and have a wonderful weekend!

Sincerely,

The CSMA Board

- 
- [Ability to Address ESG Risk Will Increasingly Differentiate Credit Quality After Pandemic: Moody's](#)
  - [In re: The Financial Oversight and Management Board for Puerto Rico – SIFMA Amicus Brief](#)
  - [S&P U.S. State Ratings And Outlooks: Current List](#)
  - [The COVID-19 Pandemic Continues On and So Do Telephonic TEFRA Hearings: Squire Patton Boggs](#)
  - [Webpage Will Provide Updates on TE/GE Compliance Strategies.](#)
  - [Higher Education: The Future is Not the Past – MAGNY Webinar](#)
  - And finally, Much Ado About Sprinkles is brought to us this week by [Meiners v. St. Tammany Parish Fire Protection District No. 4](#), a bizarre tale in which a veteran fire captain lost his job due to his insistence that he was meeting with a ladies group at a Pinkberry yogurt shop when he was in fact having a thoroughly permissible lunch with his wife. The story features skullduggery and shenanigans such as surreptitious photos of the non-offending lunch, wiped cell phones and this bizarre sentence from the opinion, "The question of whether [fire captain] was actually at Pink Berry [sic] is a matter that is peculiarly within his knowledge." (Seems peculiarly dismissive of the employees and patrons actually at Pinkberry during the period in question, no?) But, as they say, it's not the crime, it's the sticky bits you can't get off your hands with those pathetic little napkins they hand out. Truly a legal maxim for the ages.

---

## **TELECOM - FEDERAL**

### **COMPTEL v. Federal Communications Commission**

**United States Court of Appeals, District of Columbia Circuit - November 3, 2020 - F.3d - 2020 WL 6437312**

Competitive local exchange carrier and California's telecommunications regulator filed petitions for review of order of the Federal Communications Commission (FCC), which determined that incumbent local exchange carriers no longer dominated telecommunications market, and exercised its authority under the Telecommunications Act to forbear from enforcing wholesale pricing requirement and analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers.

Following consolidation of proceedings, incumbent carrier intervened in support of FCC.

The Court of Appeals holds that:

- FCC's decision to forbear from enforcing wholesale pricing requirement was not arbitrary and capricious, and
- Findings and modes of analysis that were allegedly inconsistent with FCC's past orders did not render its forbearance order arbitrary and capricious.

Federal Communication Commission's (FCC) decision to forbear, under the Telecommunications Act, from enforcing wholesale pricing requirement it had previously imposed to foster competition in providing voice services for resale to customers was not arbitrary and capricious under the Administrative Procedure Act (APA), where it reasonably focused on national market for voice telecommunication services, rather than local markets separately, it found that copper wire advantage was of rapidly declining importance due to competing modes of voice transmission, and it found that incumbents' possession of copper loops no longer gave them meaningful market power in national voice market, even though there were isolated geographic locations, especially rural areas, where competing modes were less robust.

Federal Communication Commission's (FCC) decision to forbear, under the Telecommunications Act, from enforcing analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers was not arbitrary and capricious under the Administrative Procedure Act (APA), although there were times when only copper loops, being self-powered, could conduct 9-1-1 calls when power went out, and FCC did not engage in detailed discussion about negative impact on public safety, where forbearance from unbundling requirement would not reduce availability of line-powered copper networks.

Findings and modes of analysis that were allegedly inconsistent with Federal Communication Commission's (FCC) past orders did not render arbitrary and capricious its order, pursuant to its authority under the Telecommunications Act, to forbear from enforcing wholesale pricing requirement and analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers, where FCC took different positions over last few decades because market for voice services and relevant technology had changed dramatically, it explained how market had evolved, and it reasonably concluded that intermodal competition was now sufficient to discipline prices.

---

## **EMINENT DOMAIN - GEORGIA**

### **Clay v. Douglasville-Douglas County Water and Sewer Authority**

**Court of Appeals of Georgia - October 16, 2020 - S.E.2d - 2020 WL 6111205**

Property owner brought action against county water and sewer authority (WSA), seeking damages for inverse condemnation, various costs, attorney fees, penalties, and other items.

The Superior Court granted defendant's motion to dismiss, and property owner appealed.

The Court of Appeals held that:

- WSA's denial of property owner's request for a variance from its stormwater regulations constituted an administrative determination;
- WSA was a local administrative agency; and
- Property owner was required to file an application for discretionary appeal from superior court's dismissal of his action against the WSA, disapproving *Brownlow v. City of Calhoun*, 198 Ga. App. 710, 402 S.E.2d 788.

County water and sewer authority's (WSA) denial of property owner's request for a variance from its stormwater regulations constituted an "administrative determination" for purposes of the Appellate Practice Act provision governing appeals from state and local administrative agencies; the WSA simply determined that based on the size of property owner's property and the specifics of his proposed construction plans that the applicable stormwater regulations barred him from proceeding without taking corrective measures and that the WSA was not authorized to grant a variance, and as such, the WSA's denial was based on the particulars of property owner's proposal and the decision pertained to his property alone.

County water and sewer authority (WSA) was a "local administrative agency" for purposes of the Appellate Practice Act provision governing appeals from state and local administrative agencies; the legislature established the WSA as a "public body corporate," and its powers included the power to contract with the city with respect to a water and sewage system, to include apportioning or designating the responsibility for any functions normally maintained by a water and sewerage system.

Property owner was required to file an application for discretionary appeal from superior court's dismissal of his action against county water and sewer authority (WSA), even though the action was couched as a claim for inverse condemnation; property owner challenged the WSA's decision by arguing its regulations should not have applied to his property because they had been superseded by federal and state statutory law, and property owner had been heard in two tribunals on the relevant issues, once by an administrative agency, and once by the superior court; disapproving *Brownlow v. City of Calhoun*, 198 Ga. App. 710, 402 S.E.2d 788.

---

## **EMPLOYMENT - LOUISIANA**

### **Meiners v. St. Tammany Parish Fire Protection District No. 4**

**Supreme Court of Louisiana - October 20, 2020 - So.3d - 2020 WL 6146106 - 2020-0491 (La. 10/1/20)**

Former assistant fire chief for parish fire protection district filed petition for judicial review of

decision of the district's civil service board which affirmed his termination.

The District Court reversed and remanded. District sought supervisory review. The Court of Appeal denied writ. District filed application for supervisory writ, and certiorari was granted.

The Supreme Court held that district court exceeded its statutory authority in reversing civil service board's decision.

District court exceeded its authority, under statute governing court's review of decision of civil service board, in reversing decision of parish fire protection district's civil service board, which had upheld termination of assistant fire chief based on findings that assistant chief had made untruthful statements under oath, had improperly used his position to intimidate another officer, and had conducted factory reset of his district-issued cellphone, thereby destroying evidence; district court found sufficient evidence supported board's good faith in making two of the findings, but still remanded for further proceedings, and although district court did not impose different sanction in place of board's sanction, clear implication of court's judgment was that termination was excessive.

---

## **INVERSE CONDEMNATION - MISSISSIPPI**

### **[Bay Point Properties, Inc. v. Mississippi Transportation Commission](#)**

**Supreme Court of Mississippi - October 29, 2020 - So.3d - 2020 WL 6334788**

Landowner filed inverse condemnation proceedings against the Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property.

The Circuit Court entered judgment on jury verdict finding that the easement, for which MTC had paid \$50,000, continued to encumber the property, but that the use by MTC was not a highway purpose and awarding landowner the encumbered value of \$500.00 and no attorney fees. Landowner appealed. The Supreme Court, en banc, affirmed in part, reversed in part, and remanded for award of attorney fees. On remand, the Circuit Court awarded fees, but not in amount requested, and landowner appealed.

Trial court's decision, in making award of prevailing party attorney fees to landowner in inverse condemnation action, to place greater weight on the results obtained and to award landowner only \$ 67,277.35 in attorney fees, costs and expenses, not the \$880,171.81 that it sought for obtaining an inverse condemnation award in nominal amount of \$500.00, was not unmistakable or indisputable error and could not be disturbed under a "manifest abuse of discretion" standard of review.

---

## **BALLOT INITIATIVE - TEXAS**

### **[Pool v. City of Houston](#)**

**United States Court of Appeals, Fifth Circuit - October 23, 2020 - F.3d - 2020 WL 6253444**

Professional petition circulators brought action challenging city charter provision, which permitted only registered voters who were city residents to circulate petitions for ballot initiatives and referenda.

The United States District Court for the Southern District of Texas sua sponte dismissed the action.

Circulators appealed.

The Court of Appeals held that:

- Petition circulators alleged injury-in-fact sufficient to establish standing to challenge city charter provision, and
- Action was not rendered moot.

Professional petition circulators alleged injury-in-fact sufficient to support standing to bring action challenging city charter provision, which permitted only registered voters who were city residents to circulate petitions for ballot initiatives and referenda, as violative of their First Amendment free speech rights; circulators allegedly participated in circulation of numerous petitions in the past and intended to participate in such activity in the future, and there was reasonable threat of city's future enforcement of charter provision, in light of city's prior attempted enforcement and language on the city's petition forms.

Professional petition circulators' action challenging city charter provision, which permitted only registered voters who were city residents to circulate petitions for ballot initiatives and referenda, as violative of their First Amendment free speech rights was not rendered moot by city's placement of "editor's note" on its website indicating that city would accept petitions circulated by individuals who were not city residents and registered voters with a link to a revised petition form for nonresidents, where city council did not formally change the challenged provision or approve the nonresident petition form.

---

## **TAXPAYER STANDING - VIRGINIA**

### **[McClary v. Jenkins](#)**

**Supreme Court of Virginia - October 22, 2020 - S.E.2d - 2020 WL 6192724**

Taxpayers brought action for declaratory and injunctive relief against sheriff and county concerning sheriff's cooperation agreement with the federal government concerning the enforcement of federal immigration laws.

The Circuit Court dismissed the suit, and taxpayers appealed.

The Supreme Court held that taxpayers lacked standing to challenge local governmental actions concerning enforcement of federal immigration laws.

Taxpayers seeking declaratory and injunctive relief against sheriff and county concerning the enforcement of federal immigration laws failed to allege specific local costs or expenditure as required to establish standing to challenge a governmental action; taxpayers' did not make any allegations regarding a certain dollar amount or specifics concerning the appropriation of local tax revenues.

---

## **POLITICAL SUBDIVISIONS - VIRGINIA**

### **[Dumfries-Triangle Rescue Squad, Incorporated v. Board of County Supervisors of Prince William County](#)**

**Supreme Court of Virginia - October 22, 2020 - S.E.2d - 2020 WL 6192378**

County board brought declaratory judgment action against provider of emergency medical services, seeking determination that board had authority to dissolve provider's corporate status.

The Circuit Court entered judgment in favor of board. Provider appealed.

The Supreme Court held that:

- Provider was not "established pursuant to" statute governing emergency medical services agency, and thus county board lacked authority under such statute to dissolve provider, and
- Such statute did not grant board power by implication to dissolve provider.

Entity which provided emergency medical services to county pursuant to contract was not "established pursuant to" statute governing emergency medical services agency, and thus county board lacked authority under such statute to dissolve entity, where entity existed well prior to enactment of statute, and after board severed its contractual relationship with entity, entity continued as private, nonstock corporation.

Statute allowing a county board to dissolve an emergency medical services agency "established pursuant to" such statute did not grant board, by implication, the power to dissolve an entity which was not established pursuant to statute but which provided emergency medical services pursuant to contract with county; plain language of statute was so strong as to preclude authority by necessary implication.

---

## **TAX - ALABAMA**

### **[Jefferson County Board of Education v. City of Irondale](#)**

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

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

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

The Supreme Court held that:

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

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

State-agent immunity was not a basis to find that employees of county board of education were exempt from occupational tax imposed by city; ordinance did not affect any government function of

the county board of education, payment of the occupational tax was not related to a board employee's government responsibilities, and if the county board of education was unwilling to withhold the occupational tax for its employees, the ordinance provided a procedure for employees to independently comply with the requirements of the ordinance.

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

---

## **The COVID-19 Pandemic Continues On and So Do Telephonic TEFRA Hearings: Squire Patton Boggs**

Remember earlier this year when the novelty of working from home hadn't worn off, when every day wasn't [Groundhog Day](#), when we hadn't run out of Netflix to watch, and when we were all concerned about how to satisfy the in-person TEFRA hearing requirement for tax-exempt private activity bonds in the midst of a pandemic and all sorts of Stay-at-Home orders? I know, that seems like decades ago!

As a refresher, on [Star Wars Day](#),<sup>[1]</sup> the IRS responded to NABL's request for relief from the in-person TEFRA hearing requirement in the form of [Rev. Proc. 2020-21](#). Rev. Proc. 2020-21 permits telephonic TEFRA hearings during the period between May 4, 2020 and December 31, 2020. Specifically, during this period, a governmental unit can meet the TEFRA requirement that the public hearing be held in a convenient location by affording the general public access to the hearing by toll-free telephone call.<sup>[2]</sup> It's clear that the IRS was also hoping that the COVID-19 pandemic would be all but a distant memory by the end of 2020.

Unfortunately, it looks like the COVID-19 pandemic is probably going to be with us beyond December 31, 2020. So, yesterday, the IRS issued [Rev. Proc. 2020-49](#), which extends until **September 30, 2021** the period during which telephonic TEFRA hearings can be held in lieu of in-person TEFRA hearings. Hopefully, we won't be in quarantine until then.

Now back to your regularly scheduled stalking of election coverage.

---

[1] Or May 4, 2020 – you can choose how you want to recognize days in 2020.

[2] Never have the authors of this blog explained to so many people what a toll-free number is.

### **The Public Finance Tax Blog**

**By Taylor Klavan on November 5, 2020**

**Squire Patton Boggs**

---

## **TAX - CONNECTICUT**

### **[American Tax Funding, LLC v. Design Land Developers of Newtown, Inc.](#)**

**Appellate Court of Connecticut - October 20, 2020 - A.3d - 200 Conn.App. 837 - 2020 WL 6126558**

Assignee of town municipal property tax liens against estate brought action against estate which sought the foreclosure of tax liens for one year of delinquent taxes and sought an in personam money judgment for two years of delinquent taxes.

The Superior Court granted assignee's motion for default for failure to plead, and assignee filed a motion for a default judgment regarding two counts seeking money judgment. Estate filed a motion to set aside the default and an answer. Thereafter, the Superior Court granted assignee's motion for default judgment. Estate appealed.

The Appellate Court held that:

- Estate's appeal of default judgment against it was moot because trial court lacked jurisdiction, and thus dismissal of appeal was required, and
- Mootness of appeal warranted vacatur of trial court's judgment.

Because estate was not a legal entity, default judgment against it and in favor of assignee of tax liens on estate property was a nullity, and thus, trial court lacked jurisdiction to render default judgment against estate and estate's appeal was moot and required dismissal; assignee's complaint named estate as defendant, summons listed the estate as the party served, service on the estate was executed by serving coexecutor of estate, complaint did not name any coexecutor in a representative capacity, nor did coexecutors names appear on any appellate materials in an individual capacity, all materials filed by estate were submitted under name of, or behalf of, estate, and appellate file was not replete with references to coexecutors, nor were they treated as real parties in interest.

Mootness of appeal due to trial court's entry of default judgment against estate, which was not a legal entity and lacked the capacity to be sued, warranted vacatur of trial court's order, where estate was not responsible for mootness of its appeal, and trial court's unreviewable judgment could have had preclusive effects against estate in subsequent litigation.

---

## **[Ability to Address ESG Risk Will Increasingly Differentiate Credit Quality After Pandemic: Moody's](#)**

[Read the Moody's Report.](#)

---

## **[In re: The Financial Oversight and Management Board for Puerto Rico - SIFMA Amicus Brief](#)**

### **Amicus Issue:**

Whether the security or property interest of bondholders and the monolines in excise tax revenues

and toll revenues levied or collected by the Commonwealth specifically to repay the bond debt issued by the Commonwealth's independent instrumentalities does not attach until after those revenues are deposited with the fiscal agent.

**Counsel of Record:**

Faegre Drinker Biddle & Reath LLP

Laura E. Appleby

Kyle R. Hosmer

[Read the brief.](#)

---

## **Tighter Municipal Budgets Shrink Retiree Health Benefits.**

### **Some city and state retirement programs swap in health stipends for medical plans or cut back benefits**

America's retired workers are getting squeezed on their health care.

Cities and states can't afford to keep the same medical benefits they promised government retirees.

For all 50 states combined, revenue declines for 2020 and 2021 could reach 13% cumulatively, according to Moody's Analytics projections, while the average cost of an employer health-care plan for an individual increased 4% in 2020 to \$7,470, according to the Kaiser Family Foundation nonprofit.

"With Covid, revenue coming into governments is diminished, making it even more difficult for cities and states to fund retiree health care," said Marianne Steger, director of public sector and labor strategy for Willis Towers Watson, a multinational insurance brokerage and adviser.

The pandemic has crushed sales-tax income and tourism dollars, leaving local governments struggling to find ways to cut costs.

Over the past decade, New Jersey, Michigan, Connecticut, Kentucky and Texas reduced benefits, tightened eligibility requirements or increased premiums and fees, according to the National Association of State Retirement Administrators.

While state governments have legal protections for their workers' pension plans, not all have protections for retiree health plans.

Most states rely on a pay-as-you-go basis for these benefits, said David Draine, senior officer of the public-sector retirement systems project for the Pew Charitable Trusts. This means money isn't set aside to pay for these benefits in the future.

"We are seeing a greater divergence into places who are trying to prefund these benefits and those who aren't," he said.

Only three states—Alaska, Arizona and Oregon—have funded ratios for retiree benefits above 75%, according to a study published by S&P Global in December 2019. There were 17 states as of December 2019 that haven't accumulated any assets to prefund benefits such as health care.

For those prospective retirees who have yet to qualify for Medicare, medical-benefit cuts can mean working longer hours for more years, or even picking up another job.

"It's causing guys to have to work longer into their 60s and 70s, which could further impact injuries and health," said Steve Teolis, 64 years old, a retired firefighter who lives in Canton, Ohio, and is a member of the Ohio Police and Fire Pension Fund.

"I was still able to retire, but I knew the consequences when I left, that I had to eventually pay for my own health care," Mr. Teolis said.

The Ohio Police and Fire Pension Fund sponsored a self-insured health-care plan for its retirees from 1975 to 2018, said fund spokesman David Graham.

"With no dedicated funding source for this plan, it eventually became unsustainable," Mr. Graham said in a written statement, adding that retirees would have had to increase their contributions to keep the health-care fund solvent.

When Mr. Teolis retired, he was eligible to receive health services through a broker who contracted the services for the fund. Because none of the hospitals or doctors near him were covered by the insurance, he decided to purchase a plan on the market.

Now the Ohio fund offers a health stipend in place of medical benefits.

The health plan "still costs me roughly \$1,000 out of my pocket a month, and the stipend pays for about half of that," Mr. Teolis said.

Health stipends are a less-expensive option for retirement funds. When people under 65 are able to choose their own health-insurance plans on the marketplace, the state sheds the risk and liability of large claims that might come with old age, Ms. Steger said.

Mr. Teolis said he is looking forward to when his Medicare benefits kick in next year, when he turns 65.

Medicare allows retirees 65 or older extra coverage for medical expenses if they already have a group health plan from a former employer.

Generally, Medicare pays for a retiree's health-care bills first, and the group health-care plan coverage pays second.

Some funds such as the State Teachers Retirement System of Ohio, or STRS, are comparatively well-positioned to continue paying health-care benefits to retirees.

The net amount for STRS's health-care fund reached \$3.9 billion in 2019, according to the fund's annual financial report, with a 182% funded ratio as of last month.

"What we had to do is look at what we could afford to offer and we had to rely on premiums and reimbursements, as well as our investment earnings," said Nick Treneff, spokesman for the fund that serves about 160,000 benefit recipients.

This means if all goes as planned in the years to come, the fund is projected to be able to fully pay these benefits to retirees.

"If the fund didn't offer health care, I would work longer than I planned to, and I would probably

work until I was 65 and could qualify for Medicare, and that's a very old age for teachers," said Dale Price, a high-school math teacher for Toledo public schools and an STRS board member.

## **The Wall Street Journal**

By Logan Moore

Nov. 7, 2020 5:30 am ET

---

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

[Read the Current List.](#)

---

### **Webpage Will Provide Updates on TE/GE Compliance Strategies.**

The IRS Tax-Exempt and Government Entities Division is launching a new webpage to keep its stakeholders up to date on its compliance strategies during the fiscal year.

TE/GE officials announced the webpage November 5 during a briefing on the division's [fiscal 2021 program letter](#), which has been transformed from a static document to one designed to more accurately reflect evolving compliance strategies.

The new webpage is part of that approach, acting TE/GE Commissioner Edward Killen explained. It will be easily accessible through links on [irs.gov](#), and TE/GE will announce quarterly updates to the webpage for its communities and stakeholders, he said.

"As initiatives are closed and as we close compliance strategies, we will share the accomplishments and other relevant information that resulted from those efforts," Killen said. He added that the new approach will increase flexibility and transparency and give taxpayers greater insight into TE/GE's activities, "which we feel will support voluntary compliance and stakeholder engagement."

#### **Fiscal 2021 Priorities**

TE/GE will continue working with other IRS divisions on syndicated conservation easements, abusive charitable remainder annuity trusts, and other trends, Killen said.

The division will also team up with the Large Business and International Division and the Research, Applied Analytics, and Statistics office to support compliance in the global high-wealth arena in areas of concern to TE/GE, especially regarding private foundations, retirement plans, and closely held businesses like employee stock ownership plans, Killen added.

TE/GE will continue to identify and pursue fraud and will use enhanced techniques to identify and develop civil and criminal fraud cases, including promoter investigation cases, when appropriate, according to the program letter. The division will also recommend criminal prosecution and civil penalties or injunctions against taxpayers or promoters who evade taxes.

According to acting TE/GE Deputy Commissioner Philip Lindenmuth, TE/GE will continue leveraging technology and data analytics to identify areas of noncompliance, detect emerging issues, and help

the division allocate its resources for maximum effect and value. And for the first time, TE/GE will use robotic process automation to make processes more efficient and effective, he said.

The division will also be introducing a small-entity compliance initiative to address voluntary compliance challenges faced by small entities, Lindenmuth said.

Implementation of electronic filing of tax-exempt organization forms will continue as well. In fiscal 2021 TE/GE will work on e-filing for forms 990-T, 990-EZ, and 4720, Killen said.

TE/GE expects to launch an online interactive tax assistance tool in December to help taxpayers avoid making excess contributions to their 401(k) plans. There will also be an expansion of taxpayer digital communications, "which offers a secure exchange of messages and documents for taxpayers and their representatives," Killen said.

### **Erroneous Revocations**

Killen also addressed the IRS's recent acknowledgment that it mistakenly revoked the tax-exempt status of thousands of nonprofits because of computer issues.

The revocations occurred after the IRS, responding to the COVID-19 pandemic, extended the calendar-year deadline for filing exempt organization information returns to July 15. Because of systemic limitations, the IRS couldn't update the deadline in the program that automatically issues revocation notices to organizations that have failed to file returns for three straight years. That caused some revocation notices to be issued prematurely.

Killen noted that the IRS immediately took steps to solve the problem, including by making sure that erroneously revoked entities are still listed as exempt and by communicating directly with affected taxpayers.

"Taxpayers should not be adversely impacted by this administrative error," Killen said.

TAX ANALYSTS

by FRED STOKELD

POSTED ON NOV. 6, 2020

---

### **[Tax Exempt & Government Entities FY 2021 Program Letter: NABL](#)**

The Tax Exempt & Government Entities (TE/GE) FY [2021 Program Letter](#) has been released.

It captures priorities for new fiscal year. TE/GE will also use their new [Compliance Program and Priorities webpage](#) to provide information about additional priorities at the end of each quarter during the fiscal year.

FY 2021 compliance program and priorities align with the [IRS Strategic Goals](#):

- Strengthen Compliance Activities
- Improve Operational Efficiencies
- Maintain a Taxpayer-Focused Organization
- Ensure Awareness and Collective Understanding

- Leverage Technology and Data Analytics
- Develop Our Workforce

They will release a summary of FY 2020 accomplishments when all the data is available. You can also view the annual program and accomplishment letters for [previous years](#).

---

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

---

## **Muni Bonds Falter on Prospect of Divided Government in Washington.**

### **Generous aid to state and local governments is less likely if Democrats fail to control both White House and Congress**

The prospect of a divided government in Washington has been received rapturously in the stock market this week, but it hasn't made municipal-bond investors happy.

"It's probably one of the more negative outcomes for the asset class," said Mikhail Foux, head of municipal strategy at Barclays PLC.

Prices on bonds issued by states and local governments fell relative to Treasuries in the immediate aftermath of the election and then rebounded, but didn't receive the big bump many analysts had expected would follow in the event of a sweep by Democrats.

Yields on 10-year AAA, tax-exempt municipal bonds were 109.1% of 10-year Treasury rates Wednesday, up 2.4 percentage points from Tuesday, according to Municipal Market Data, reflecting an increase in investor concern about the risk of munis relative to U.S. government bonds. Yields fall when prices rise.

The importance of the Senate to muni prices was made clear as the week wore on. By Friday yields had slipped to 99% of 10-year Treasury rates as results in Georgia pointed to potentially two runoffs that could hand the Senate majority to Democrats come January.

For muni-bond investors, a divided government diminishes the probability of two scenarios that would have likely driven a rush into the asset class.

A Democratic sweep could greatly increase the prospects for a large state and local-government aid package meant to solidify the finances of many of the municipalities that have been crushed by the impact of the coronavirus pandemic. In addition, a Democratic House and Senate could raise the likelihood of large income-tax increases that would make tax-exempt munis more desirable to investors.

Also weighing on munis was the possibility that the bonds of Illinois could be rated as junk after voters there rejected a plan for a statewide tax increase on affluent residents.

Analysts and investors said muni bonds tied to sectors most affected by the pandemic such as tourism and mass transit were most likely to be hit by election developments.

Over the past several months, coronavirus budget shortfalls have dragged down the trading price of some municipal bonds, and October data from Municipal Market Analytics show new defaults in the roughly \$4 trillion municipal market are at an eight-year high since the start of the pandemic.

Heading into this week, investors had said that muni bonds would rally if former Vice President Joe Biden defeated President Trump and the Democrats got clear victories in the House and Senate. Under that scenario, the White House and Congress might push for more aid to state and local governments or champion an infrastructure plan or income-tax increases.

But as of Friday morning, closer races and the reduced likelihood of Democratic control of Congress and the White House mean there are likely to be more limits on such moves. Senate Majority Leader Mitch McConnell has said he doesn't favor using federal-assistance money borrowed "from future generations" to fill in state budget gaps.

Moreover, should Republicans maintain control of the upper chamber of Congress, a state and local-government aid package that the Senate might support could drive up the supply of tax-exempt debt, pushing down prices, analysts said. That is because even fairly stable governments might rely more on borrowing to manage through coronavirus-induced shortfalls. About \$45 billion in local borrowing measures was on the ballot Tuesday, according to IHS Markit.

One source of new debt would remain limited under a divided Congress, however.

If Republicans stay in control of the Senate, Democrats are less likely to be able to end the ban added by Republicans in late 2017 on tax-exempt refinancing of municipal debt before the agreed-upon refinancing date. That would keep closed one longtime avenue for tax-exempt debt to enter the municipal market, helping to stabilize prices.

Before the ban, state and local governments could reap more savings from early refinancing as rates dropped. Hennepin County, Minn., for example, saved more than \$30 million in 2017 by refinancing debt used to help build Target Field, where the Minnesota Twins play.

Many in the market were surprised by an outcome of the Illinois election.

Yields rose by about a third of a percentage point Wednesday on 10-year Illinois general obligation bonds relative to AAA rates and remained at about that same level Thursday, according to Municipal Market Data, after Illinois voters rejected the ballot measure proposing to increase taxes on incomes over \$250,000.

A February poll of 1,000 Illinois registered voters by the Paul Simon Public Policy Institute at Southern Illinois University, Carbondale, found that they favored the tax by 2-1. During a state bond sale two weeks ago, investors agreed to prices significantly higher than where the state's debt was trading Wednesday, Thursday and Friday, according to Municipal Market Data and the Municipal Securities Rulemaking Board's Electronic Municipal Market Access platform.

The state tax plan would have brought in more than \$1 billion in yearly revenue, according to an estimate by Fitch Ratings. The refusal to approve the tax increases the chances that Illinois, currently rated one notch above speculative grade by multiple credit-rating firms, will become the only U.S. state in junk-bond territory.

"Unless there's a surprisingly large federal stimulus bill or state lawmakers very quickly come up with another solution to raise a lot of new revenue, Illinois is likely to suffer a downgrade from at least one of the rating agencies in the next several months," said Adam Stern, co-head of research at Breckinridge Capital Advisors.

Higher-grade bonds are expected to fare better and could even experience a longer-term bump as investors look to quality credits. The state of Florida, despite a tourism industry suffering from the pandemic, has benefited substantially from aid sent in the spring, said Ben Watkins, director of the Florida Division of Bond Finance.

"It's been a godsend," Mr. Watkins said. If cities and states don't get much more aid, the resulting market distress "will be much more isolated than a widespread problem," he added.

## **The Wall Street Journal**

By Heather Gillers

Nov. 6, 2020 8:00 am ET

---

### **Munis Rally Despite Election Suggesting 'Least Bullish' Outcome.**

- **Divided government promises less aid, obstacle to tax hikes**
- **UBS sees 'headwind' for credit quality of muni market**

After Tuesday's election, state and local government bonds staged their biggest rally in more than six months as traders wagered a divided federal government would spend less aggressively — a positive shift for investors worried about long-term inflation.

But municipal analysts say such an outcome, with Democrat Joe Biden in the White House and a Republican-led Senate, is less welcome to the \$3.9 trillion market than a clean Democratic sweep.

That's because a political gridlock would likely reduce the scope of the aid state and local governments will get to bridge budget gaps created by the coronavirus shutdowns. It would also reduce the odds of tax increases on the wealthiest Americans, which would make tax-exempt bonds more alluring.

Analysts from UBS AG said Thursday that a divided government increases the credit risk on the bonds, since any aid package is likely to be "less generous." Citigroup Inc. analysts led by Vikram Rai said ahead of the vote that a Biden presidency with GOP control of the Senate was the "least bullish" scenario for the municipal-securities market.

A party split between a Blue White House and a Red Senate would likely mean "legislation for future fiscal aid packages will not flow through easily and aid will be less generous," Citigroup's analysts said. "This would not bode well for municipal credit."

The outcome of the election is still in flux, with ballots being counted in several key states and President Donald Trump pushing legal challenges intended to sway it in his favor. Georgia may also need to hold a second run-off election for one of its Senate seats, which could help tip the balance of power in that chamber to the Democrats.

Treasury yields edged up slightly Thursday. But those on municipal bonds, which are far less volatile, dropped for a second day, with 10-year yields falling 2 basis points to 0.82%. That follows a 9 basis point drop Wednesday, the biggest one-day decline since mid-April.

The results are crucial for states and cities that have been battered as the pandemic cut into two major sources of revenue — income- and sales-tax collections — while the coronavirus drove the

economy into the deepest downturn since World War II. That's left states and local governments facing combined shortfalls of \$450 billion through fiscal 2022, according to a September estimate by Moody's Analytics.

Extending them federal aid was a key sticking point in negotiations over a new stimulus bill ahead of the election, with Trump mischaracterizing it as a bailout of states run by his Democratic foes. House Democrats included \$1 trillion of such aid in the bill they passed.

"Fiscal stimulus to state and local governments is now expected to be less generous than under a Blue Wave scenario," wrote analysts at UBS's wealth management arm in a note published Thursday. "This represents a headwind for municipal credit quality."

Biden's campaign has reiterated that state and local government aid would be central to his economic stimulus. Jared Bernstein, a senior economic adviser to the campaign, said such aid is a high "fiscal multiplier" and would help to build "a fiscal bridge to the other side of the crisis."

Such aid would prevent the need for large budget cuts, tax increases or layoffs that would deal a further setback to the economic recovery. It could also prevent a surge of borrowing by some states to temporarily paper over their shortfalls, which could put pressure on their credit ratings.

Kentucky Senator Mitch McConnell said on Wednesday it's a "possibility" that he would support more aid for states and cities.

Lyle Fitterer, co-head of municipal investments at Robert W Baird & Co Inc speculates that a state and local government stimulus would be around \$250 billion under a divided government.

"We would still argue that that's plenty and that's sufficient until we see what's going to happen to the economy from a longer term perspective, so that gets them over the hump for the next year," he said in an interview.

## **Bloomberg Markets**

By Danielle Moran

November 5, 2020, 10:16 AM PST

— *With assistance by Shruti Singh, and Martin Z Braun*

---

### **[In Election Dispute, Citi Sees Munis Lagging in Flight to Safety.](#)**

- **Market will go into 'risk-off mode' analogous to 2000 election**
- **Treasuries would likely gain, making munis look cheaper**

A disputed presidential election could set off a Treasury rally that would make state and local government bond prices look cheaper — at least in comparison.

Citigroup Inc.'s municipal strategists said they foresee a "somewhat high probability" that a clear victor won't quickly be known. If so, Treasury prices would likely rise as investors shift cash into the safest assets, widening the gap between yields on those securities and less volatile municipal bonds.

"We would expect a moderate Treasury rally as the market goes into risk-off mode as they await the

adjudication of the election by SCOTUS,” Citigroup Inc. muni strategists led by Vikram Rai wrote, using the acronym for the U.S. Supreme Court.

While polls show Democrat Joe Biden leading in the polls, President Donald Trump and Republicans are poised to mount legal challenges in battleground states where a flood of mail-in ballots will continue to be tallied after Election Day.

Yet traders and fund managers may not need to gird for extreme volatility: While Treasuries would gain as the election is sorted out, muni-bond prices would likely be little changed in light trading, Rai said in a phone interview.

“If they don’t trade, the prints will remain stale and it will seem like the ratios are widening, it will seem like the spreads are widening,” he said. “That’s typical for what happens with all spread products whenever there’s a risk-off rally.”

Top-rated 10-year municipal bonds currently yield about 0.93%, or about 110% of comparable Treasury bonds, up from as little as 86% in August. That ratio — a key measure of relative value — signals that municipal bonds are growing cheaper when it rises and more pricey when it falls.

Treasuries rallied in the aftermath of the Gore versus Bush election of 2000, after a recount battle was ultimately decided by the Supreme Court. From Nov. 8, 2000 to December 12, 2000, when the Supreme Court ruled on the recount dispute, the 10-year U.S. Treasury rallied by about 0.52%, according to Citigroup. The 10-year was 5.87% on Nov. 8, 2000, so a comparable decline in percentage terms would be just 0.07 percentage point.

By contrast, if the election is decided without a dispute, Citigroup strategists expect bond markets will selloff moderately and stocks will rise “as investors breathe a sigh of relief at the thought of finally having this epic event behind us.”

## **Bloomberg Markets**

By Martin Z Braun

November 3, 2020, 10:30 AM PST

---

### **Wall Street Bets On Biden Win, GOP Senate, And Smaller Stimulus.**

Wall Street is betting on Joe Biden winning the presidency, Republicans controlling Congress, and a divided government. As a result, there’ll be a much smaller stimulus package in early 2021 and few, if any, tax hikes.

“Gridlock is the most likely outcome,” Brian Gardner, chief policy analyst for Stifel & Co. in New York, told clients in a report, predicting that the GOP would retain control of the Senate.

“Progressives had their wings clipped” Gardner wrote. Bad feelings between leftist Democrats and conservative Republicans “will likely prevent widespread collaboration.” He expects Congress, with the GOP in control of the upper chamber, will disappoint investors by spending less than the Democrats’ promised \$2 billion to prop up the economy, though more highway spending is likely.

“The likelihood that the Senate will not flip to the Democrats gives comfort that major legislation is

unlikely,” James M. Meyer, chief investment officer at West Conshohocken-based Tower Bridge Advisors, which invests over \$1 billion, told clients in a note. “That leaves the economic reins in the hands of the Fed. Investors should like that.”

Meyer added that, if the Senate remains Republican, “the stock market barely reacts to social unrest, crude political speech, wars, or climate change.” It reacts, instead, to corporate profits and Federal Reserve interest rates. “No one can fault investors who want to see more of the same”: cheap borrowing rates, modest but steady growth, and “hopefully, an end to the pandemic sometime in 2021.”

In response, the Dow Jones Industrial Average jumped 367 points Wednesday to close trading at 27,847.

A divided Congress is unlikely to pass drug-pricing limits, so that’s a good outcome for pharmaceutical companies, while a Biden presidency, even without full congressional support, could bring “a more rigorous and thoughtful approach to science,” Geoffrey Porges, analyst at SVB Leerink, told investors in a note excerpted in Endpoints News, a drug industry newsletter.

The GOP majority “takes extreme scenarios off the table, including large tax hikes, major health care changes, and a huge stimulus package,” said Jeff Mills, chief investment officer of Bryn Mawr Trust Wealth.

Biden has said he would only raises taxes on the wealthy, on those who make more than \$400,000 a year.

Strange as it sounds, divided governments often result in stock prices moving higher.

“Ultimately a gridlock scenario ends up being a good thing. We can start to focus on earnings, vs. handicapping major swings in policy,” Mills said.

Key takeaways for investors under this scenario include a weaker U.S. dollar, compared with other currencies.

“We see pressure on the dollar under a Biden presidency, with a reversal of tariffs and trade policy,” Mills said. Tariffs tend to tamp down growth internationally, so scrapping the Trump-era tariffs would have the opposite effect.

“If tariffs are reversed, on a net basis, that’s better for growth in international markets, but has the opposite effect on the U.S. dollar,” he said.

Interest rates: With a smaller stimulus package, that means less possibility of inflation in the U.S. economy, Mills said.

“If we get a stimulus package, it won’t happen until Congress is sworn in Jan. 3, and then likely wouldn’t pass before February,” he said.

Less inflation means less likelihood of higher interest rates, so yields on Treasury bonds have dropped early today in trading.

Health care: This sector, which includes insurers, biotechnology, and pharmaceuticals, is “the biggest winner,” Mills said, since changes to the Affordable Care Act or a so-called “public option” would be off the table.

“That was weighing on this area of the market.”

**Big Technology:** Should the GOP continue to control the Senate, regulatory scrutiny of Big Tech will likely fade, which prompted share prices of Facebook (FB) and Amazon (AMZN) to rise in early trading.

**Marijuana legalization:** Voters in New Jersey, Arizona, Montana, and South Dakota legalized recreational marijuana, and now 1 in 3 Americans live in a state where adult pot use is legal.

The results sent a mild ripple through the marijuana sector. Shares of Canadian companies were down 7 to 9 percent. Canadian cannabis companies cannot own assets in the United States and they cannot sell Canadian grown marijuana in the U.S. So they had nothing to gain from the four states legalizing.

Stocks in the American-owned multistate operators — among which Cresco Labs and Green Thumb Industries are the largest — were flat to slightly up, according to analysts.

“On the whole, it was a wash,” said Pablo Zuanic, analyst for Cantor Fitzgerald

Pot sales tax revenue will help cash-strapped New Jersey and towns that allow and tax marijuana retailers, but it could take “two to three years” to start collecting even limited revenues, and by then neighboring states will have likely cut into New Jersey sales, Baye Larsen, vice president at Moody’s Investors Service, said in a report.

More drug-related initiatives were also passed, with Oregon becoming the first in the nation to decriminalize possession of “hard drugs,” while D.C. voters approved a measure decriminalizing “magic mushrooms” and other organic psychedelics. Denver, Oakland and Santa Cruz passed similar proposals.

**Muni bonds:** “As the economy improves and we get to a vaccine, we should see higher [interest] rates no matter who is finally elected President,” wrote David Kotok, municipal bond and fixed income investor with Cumberland Advisors. For now, however, interest rates remain low.

“Munis should be fine,” he wrote, although these bonds “will probably not get a tax-increase boost right away, from a demand/supply standpoint they are in very good shape.”

Until a second stimulus bill passes Congress, “we may see some additional actions from the Federal Reserve to shore up markets if needed. We also expect further jawboning from the Fed to Congress on the importance of additional stimulus.”

**Tax moves:** Hank Smith, head of investment strategy at Haverford Trust said if Biden wins, and the Senate remains Republican, there is “no shot of any major legislation, tax increases or state tax changes” including a wealth tax passing Congress, he noted.

“We won’t see anything crazy in the cabinet because everything has to be approved by the Senate. Elizabeth Warren will not become Treasury secretary. All Biden will be able to do is issue executive orders,” Smith said.

## **Philadelphia Inquirer**

November 5, 2020

Staff writer Sam Wood contributed to this article.

## **Democratic Senators Call for Expansion of Fed Lending Programs.**

Four Democratic senators, including Minority Leader Chuck Schumer, urged the Federal Reserve and the U.S. Treasury to expand emergency lending programs for businesses and states and municipalities to provide support while Congress debates additional fiscal stimulus.

In a Nov. 5 letter to Fed Chair Jerome Powell and Treasury Secretary Steven Mnuchin obtained by Bloomberg, the senators asked that the programs be extended beyond their Dec. 31 deadlines, and that changes be made to make them more broadly available. In addition to Schumer, a senator from New York, the letter was signed by Mark Warner of Virginia, Sherrod Brown of Ohio and Elizabeth Warren of Massachusetts.

"Absent additional action, these facilities will fail to reach their full potential to support a robust economic recovery," the senators wrote.

Both the Main Street Lending Facility, which is aimed at providing loans to small- and mid-size businesses and nonprofits, and the Municipal Liquidity Facility, for state and local governments of a certain size, have faced criticism for low participation. The Fed has argued that the muni facility has worked in that it provided a backstop for the market, which seized up in March but has functioned smoothly since then.

### **No Decision**

Powell told a press conference Thursday that there had been no decision taken on whether to extend the facilities, which the Fed would do in coordination with the Treasury, while stressing that they had provided an important backstop during the coronavirus crisis.

"If things deteriorate, that would be the case where you'd want to maybe continue the facilities and maybe change them and maybe have new ones," Powell said.

The Main Street program, which isn't seen as merely a backstop, has so far only lent out \$4.1 billion of a potential \$600 billion. Critics say that banks won't make loans to the companies that need it most right now, as they pose a higher risk. Without further stimulus from Congress on the immediate horizon, the Fed's emergency programs remain one of the few life lines in an economy that continues to struggle through a sputtering recovery.

The Fed has already made several changes to the Main Street program to widen the pool of potential borrowers. Last week it lowered the minimum loan amount to \$100,000 from \$250,000 and increased the fees banks stand to gain from participating in it. The senators propose further lowering the minimum to \$50,000, which would target small businesses who no longer have access to the shuttered Paycheck Protection Program, and further incentivize banks to lend through a more-attractive fee structure.

### **Muni Facility**

Beyond extending the deadlines, the senators also ask for longer terms in the facility loans, beyond 3 years for the municipal program and 5 years for Main Street.

The Treasury Department said last month it opposes extending the \$500 billion municipal lending program beyond the end of 2020 or easing the costly terms that have left it virtually unused. But that could change should there be a change in administrations following this week's presidential election.

The senators also ask that the Fed and Treasury allow more localities to access the muni facility, which is limited by population size, and that they set up a program to buy muni bonds in the secondary market. The current facility buys bonds directly from the issuing entity, and some have argued that aid to the secondary market would be a better way to support local governments that have seen tax revenue plummet in the last few months.

They say that these changes would particularly help minority- and female-owned businesses, who tend to own smaller companies, and first responders, who also are also disproportionately female and Americans of color. They note that women and Americans of color have borne the brunt of the damage in the pandemic.

## **Bloomberg Business**

By Catarina Saraiva

November 6, 2020, 8:54 AM PST

---

### **[Divided Government May Push the Fed to Go Bigger. Here's What That Might Look Like.](#)**

Gridlock in Washington doesn't seem to be going away, and a divided government probably won't be providing much more help to an economy still ailing from the coronavirus.

That's bad news for the growth outlook. After all, the economy is still about 5% smaller than it otherwise would have been, with roughly 11.6 million Americans still unemployed or underemployed compared with February. And while roughly 20 million Americans have returned to work since April, the recovery hasn't been enough to prevent millions of people being jobless for longer than 26 weeks. Moreover, many of those who have gotten rehired since April are nevertheless in a bad financial situation, given the low level of wages of the jobs that have been added and the depletion of household savings.

[Continue reading.](#)

## **Barron's**

By Matthew C. Klein

Nov. 6, 2020 4:30 pm ET

---

### **[8 Big Banks in Murky Waters, To Face U.S. Cities' Allegations.](#)**

Eight big banks in the United States are likely to be sued in a class action lawsuit filed by Philadelphia and Baltimore, per Reuters. Per U.S. District Judge Jesse Furman in Manhattan, the

cities are permitted to move on with anti-trust claims against banks suing over their marketing of variable-rate demand obligations (VRDOs) from 2008 through 2016.

## **Allegations**

Per the cities' allegations, eight banks, including affiliates of Bank of America BAC, Barclays Plc BCS, Citigroup C, Goldman Sachs GS, JPMorgan JPM, Morgan Stanley MS, Royal Bank of Canada RY and Wells Fargo WFC, have conspired and forced state and local governments for paying higher interest rates on a particular type of tax-exempt municipal bond — VRDOs.

Further, Philadelphia and Baltimore claimed that the colluded move reduced the available funds for hospitals, power and water supplies, schools, transportation and other essential municipal services.

With short-term interest rates, VRDOs are long-term bonds which are reset weekly. Moreover, early redemption is allowed for investors, while banks need to re-market these bonds at the lowest possible rates to other investors.

These banks have been alleged of sharing proprietary information related to bond inventories and colluded rate changes leading to deterred redemptions. Furthermore, banks succeeded to charge millions of dollars in remarketing and service fees for "effectively doing nothing" on this move.

Notably, Philadelphia and Baltimore issued \$1.67 billion and \$261 million of VRDOs, respectively.

In his decision, Furman said the cities offered "reason to believe that defendants stood to gain by participating in the rate-fixing scheme and that the scheme was possible only with defendants' coordinated efforts."

No comments have been received from the banks' spokespersons. Lawyers for the plaintiffs also had no immediate comment.

## **Conclusion**

Amid the coronavirus pandemic-induced economic slowdown, which has dampened financials of all sectors, banks have come under the purview of new allegations. A landmark judgment should be specifically put forward to terminate such collusions and shrewd practices in the future, bring justice to the sufferers, and punish the wrongdoers. While the settlement of the issues will put to rest investigations and bring reprieve to the banks, this comes as a huge blow to their financials.

## **Yahoo Finance**

by Priti Dhanuka

November 3, 2020

---

## **[Judge Allows Cities' Class Action Over Bond Rate Conspiracy to Proceed.](#)**

A federal judge has allowed to proceed a class action antitrust suit filed against eight banks for conspiracy to fix rates on tax-exempt municipal bonds.

On November 2 Judge Jesse M. Furman of the U.S. District Court for the Southern District of New York denied the banks' motions to dismiss in *City of Philadelphia v. Bank of America Corp.*

The class action complaint filed by the cities of Philadelphia and Baltimore alleges that the banks — Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, Barclays, Goldman Sachs, Morgan Stanley, and the Royal Bank of Canada — conspired not to compete against each other and to set, almost daily, artificially high interest rates on state and local municipal bonds between 2008 and 2016. The artificially high rates were estimated to be around 75 percent above what the plaintiffs would have otherwise paid, costing governments, schools, hospitals, and charities potentially billions of dollars, according to the complaint.

The alleged conspiracy surrounds the issuance of variable rate demand obligations (VRDOs), which are tax-exempt bonds with interest rates reset periodically, typically weekly. Bond issuers contract with banks as remarketing agents (RMAs) that are required to seek the lowest possible rates when selling bonds on behalf of the borrowers when the rates are reset or when an investor redeems a bond. If a rate is too high above the market, a bond issuer may find a new RMA to secure lower rates, and the bank loses a client. If the rate was set too low, bondholders would redeem their bonds and the RMAs would incur the costs of remarketing the bonds or holding them on their books.

The cities cite testimony from a former managing director at Citigroup, former senior RMA personnel at JPMorgan, and a former RMA at Wells Fargo who claim that communications between the banks happened regularly by telephone, in-person meetings, and Bloomberg messaging technology.

“A former senior RMA official at JPMorgan confirmed that it was a ‘dirty little secret’ that RMAs would talk to each other about rates and would ask other RMAs questions like, ‘Are you placing this paper’ — referring to a particular VRDO — ‘and if so, what will be the rate?’,” Furman wrote in his opinion.

The cities also cite statistical evidence supporting their argument. The issue was first raised by a whistleblower, which prompted an investigation and subpoenas from the SEC and the Department of Justice in 2015 and 2016.

The cities analyzed the bond interest rates between 2008 and 2016 and found that the rates set by different banks clustered around each other during those years and diverged following the SEC and Justice Department subpoenas. The results of a regression model showed that the rates were nearly 75 percent higher than they would have been otherwise, according to the cities.

The class action suit states that there are thousands of members of the class throughout the country that were affected by the coordination between the banks.

The lawsuit was initially set in motion by Minneapolis-based municipal adviser Johan Rosenberg, who filed false claims act lawsuits in Illinois, Massachusetts, and California and was first identified by The Bond Buyer.

A pretrial conference is set for December 17.

In *City of Philadelphia v. Bank of America Corp.* (No. 19-01608), Philadelphia is represented by attorneys from Wollmuth Maher & Deutsch LLP; Quinn Emanuel Urquhart & Sullivan LLP; and Susman Godfrey LLP. Baltimore is represented by Susman Godfrey LLP. Bank of America Corp. and Merrill Lynch are represented by Wilmer Cutler Pickering Hale and Dorr LLP. Barclays Bank is represented by Skadden, Arps, Slate, Meagher & Flom LLP. Citigroup is represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP. Goldman Sachs is represented by Winston & Strawn LLP. JPMorgan Chase is represented by Covington & Burling LLP. The Royal Bank of Canada is represented by O’Melveny & Myers LLP. Wells Fargo is represented by Jones Day. BMO Financial

Group is represented by Katten Muchin Rosenman LLP.

TAX ANALYSTS

BY AARON DAVIS

11/5/2020

---

## **Emptied Sports Stadiums Tackle Losses With New Experiences.**

### **Drive-ins, weddings and dinosaur safaris help keep jobs—but can't compete with game-day revenues**

Darryl Dunn, the chief executive and general manager of the Rose Bowl Operating Co., would have been preparing to receive the biggest crowd of his year around now, had this year been normal. The 90,000-plus college football fans that usually flock to the Rose Bowl's stadium in Pasadena, Calif., for the annual New Year's Day game will be watching the action at home this time, in accordance with California's social-distancing measures.

Mr. Dunn will instead be organizing the arrival of roughly 70 animatronic dinosaurs. The Rose Bowl's parking lot in January will be transformed into a "Jurassic Quest" safari. The parking lot has already served as an outdoor concert and comedy venue, and a haunted drive-through at Halloween.

The stadium is one of many large sports venues testing new visitor experiences as the coronavirus pandemic chokes revenue from ticket sales. The venues hope to take advantage of one asset they still have: large amounts of indoor and outdoor space.

"Our revenue is based on people, and if we don't have people, we don't make money," said Mr. Dunn. "But what we have got is space—so we said to ourselves, let's use that to try and make lemonade out of this situation."

The Rose Bowl's foray into lockdown live experiences began in July, when a deal with the Tribeca Film Festival saw the stadium's parking lot turned into a drive-in movie theater for 30 screenings across four weeks. Tickets cost \$30 per vehicle, and attendees could purchase food and beverages from outdoor concession stands. Each screening of 500 cars sold out, Mr. Dunn said.

The Tribeca series put the Rose Bowl on the drive-in map, Mr. Dunn said, and led to other deals with entertainment companies such as Netflix Inc. and Walt Disney Co. 's Hulu, which last month hosted an immersive "haunted drive-through forest" experience there as part of its "Huluween" horror movie screenings.

"We've literally transitioned our business to drive-in movies," Mr. Dunn said. "That's the business that we're now marketing and selling."

The Miami Dolphins have similarly found creative uses for their home stadium, which has reopened to spectators at a limited capacity of 13,000. Since June the National Football League team has turned the outside of Hard Rock Stadium into a makeshift theater. A 90-foot-wide screen, originally installed for the 2019 Miami Open tennis tournament, screened movies throughout the summer; attendees sat in tented pods dotted around the west and east lawns of the venue. The setup on Sept. 13 rebranded as the Gameday Theater and now shows home and away Dolphins games.

Meanwhile Gillette Stadium, best known as the home of the NFL's New England Patriots in Foxborough, Mass., will later this month open a drive-through holiday lights display in its parking lots, allowing guests to navigate the 1.5 mile route in a car, bus or limo. The stadium in September also played host to Jurassic Quest, which "was such a huge success that two additional weeks were added to its original 10-day run to meet the demand for tickets," a spokeswoman said.

Sports fans are longing to return to the stands, but health experts say stadiums are one of the highest-risk areas for coronavirus transmission. Dr. Peter Chin-Hong, an infectious disease specialist, walks us through how easily the virus could spread among the crowd. Photo: Associated Press (Originally Published May 17, 2020)

In the nation's capital, soccer team D.C. United has been working with local fitness studios to host outdoor exercise classes on Audi Field. And the NFL's Green Bay Packers last month turned home stadium Lambeau Field's parking lot into a contact-free trick-or-treating zone for Halloween.

With no end in sight to social-distancing protocols, some stadiums plan to build dedicated venues that will let fans watch games and concerts at a social distance. The National Basketball Association's Milwaukee Bucks earlier this year signed off on the construction of a multilevel "outdoor tailgating space" in the parking lot of their home arena, Fiserv Forum, which will let small groups of fans eat, drink and watch any action inside the arena from shipping-container pods and parking spaces overlooking new exterior screens.

The plans have been put on ice as the team awaits guidance from the municipal health department about permissible capacity, said Bucks and Fiserv Forum President Peter Feigin.

Nevertheless, Fiserv Forum from July to September held NBA Playoffs watch parties, turning the arena's central court into a restaurant for groups of up to 10 people. Food and beverages were delivered to dining tables, a DJ provided pre-tip-off entertainment, and the games were streamed on the center hang screens. It was, Mr. Feigin said, "like the coolest basketball wedding you've ever been to."

The success of the parties encouraged the Bucks' sales and marketing team to develop Fiserv Forum's fledgling hospitality offering, which—for now, at least—will be targeted at people looking for a space big enough to host socially-distanced parties, meetings and weddings of up to 100 people, Mr. Feigin said. Wisconsin limits public gatherings to no more than 25% of a room or building's total occupancy.

The Bucks hope such an alternative revenue stream will at least cushion decimated ticket sales and keep staff employed if the coming basketball season goes ahead without spectators, Mr. Feigin said. Still, stadium executives are clear these new experiences will not come close to covering the losses of 2020, no matter how successful they have been.

Hard Rock Stadium does "not make much money at all" from its Gameday Theater, but its operation does create jobs for local people, said Todd Boyan, the Dolphins' senior vice president of stadium operations. The Rose Bowl, which is owned by the city of Pasadena and operated as a nonprofit, will lose around \$13 million this year, Mr. Dunn said.

That is better than the estimated \$16 million loss it would have suffered without the drive-in theater and experiential events, but a far cry from its usual break-even forecast, he said.

"But this helps us keep jobs and it sends the right message to our community," Mr. Dunn said. "We're saying to the city: We're still open—we're just open a bit differently."

By Katie Deighton

Nov. 3, 2020 5:23 am ET

---

## **Voters Back at Least \$26.7 Billion of Municipal Borrowing Plans.**

- **Results still pending on about \$16 billion of proposed bonds**
- **About \$3 billion of bond measures on ballots rejected so far**

Americans approved at least \$26.7 billion in state and local borrowing measures, more than half of the proposed bond sales on ballots across the country, while another \$15.7 billion are still pending final results.

So far, only \$2.7 billion of bond measures, or about 6% of those proposed, had been defeated as of Thursday, according to a preliminary tally based on data compiled by IHS Markit and Bloomberg. Voters rejected a \$275 million measure in Amarillo, Texas that would have financed improvements to the civic center, and a \$155 million school bond in Wausau, Wisconsin, also failed.

U.S. voters weighed proposals to issue an estimated \$45 billion of bonds. That's the lowest in a presidential election since 2012, according to data compiled by IHS Markit. The uncertainty over the pandemic's impact on public finances prompted many municipalities to strike borrowing referendums from ballots. The results so far bode well for governments looking to improve schools, roads, bridges and hospitals.

Of the 10 largest bond measures on the ballot, six were approved, including a \$7 billion bond proposal for the Los Angeles Unified School District and about \$3.5 billion in borrowing for improvements and construction for Dallas schools. A \$5.5 billion California bond offering for stem cell research was still pending results.

In California, which had the most proposed bonding on ballots across the country, voters approved about 75% of local revenue measures, including more than \$12 billion of school bonds, based on preliminary results.

### **Bloomberg Markets**

By Nic Querolo

November 5, 2020, 1:23 PM PST

— With assistance by Joseph Mysak Jr

---

## **Cracks Form in the Fragile Muni Bond Market.**

In the long run, fundamentals matter in all financial markets.

Stocks can be overvalued for a time. But eventually a price decline or a surge in earnings reverses

that condition.

Bonds can also be overvalued or undervalued. In these markets, analysts focus on cash flows instead of earnings to determine value.

Just as in the stock market, cash flow is measured with inflows and outflows.

In the municipal (muni) bond market, inflows consist of tax revenues. Outflows are expenses for government services.

A security could be undervalued, for example, if a tax increase is about to be implemented, that will ensure a state can repay its debt. If revenues decline suddenly, the bond could be overvalued.

Over the next few years, inflows for states should fall. The chart below shows that revenue is expected to drop by more than 11% in 2021.

[Continue reading.](#)

**moneyandmarkets.com**

Posted by Michael Carr | Nov 6, 2020

---

## **EMMA Advanced Search Features.**

The EMMA website's advanced search may feature more options than you know. Filters include bond insurance status, credit rating by rating agency, sector and more.

[Explore advanced search.](#)

---

## **Illinois Faces Risk of Junk After Voters Reject Tax on Rich.**

- **Pritzker warns of 'painful' spending cuts after measure fails**
- **Citadel's Griffin wins in battle of billionaires over tax**

Illinois voters defeated a measure that would have allowed the state to raise taxes on its wealthiest residents, striking down a pillar of Governor J.B. Pritzker's plan for shoring up the state's finances and preventing its debt from being cut to junk.

The failure of the constitutional amendment that would have scrapped the flat income tax by a vote of 55% against sent the prices of Illinois's bonds tumbling, with those due in 2034 down about 7%. The costly campaign ended in a win for Citadel founder Ken Griffin who spent nearly \$54 million to fund the opposition, while Pritzker, the billionaire heir to the Hyatt hotel empire, gave \$58 million in support.

"The citizens of Illinois have delivered a clear message to our political leaders in Springfield," Griffin, the billionaire head of the Chicago-based hedge fund, said in an emailed statement on Wednesday. "Now is the time to enact long overdue reforms to save our state from fiscal ruin."

The loss adds a new challenge to the Democratic governor's effort to steady the finances of Illinois, whose rising pension-fund costs and chronic budget shortfalls left it with the lowest bond rating among U.S. states even before the pandemic struck. Failure of the measure won't automatically trigger a downgrade to junk. The three major rating companies, which all consider Illinois the lowest level of investment grade, said they'll be watching for the state's backup plan.

"There will be cuts and they will be painful," Pritzker said during a press conference on Wednesday. Without the additional revenue from the graduated income tax, the state will look at various options including cuts potentially for public safety, education and health services and may have to rely on its "regressive" tax system for more revenue, he said.

### **Downgrade Risk**

If approved, the state would have been able to proceed with enacted legislation to apply higher rates to incomes over \$250,000, raising levies on the highest earners. Rejection by voters means the "risk of a downgrade would increase" unless the state eventually increases the flat tax, Barclays Plc said in a report Wednesday.

"The amendment's failure makes greater reliance on deficit financing more probable and is therefore credit negative, but the state's likely pursuit of other recurring fiscal strategies mitigates this impact," Moody's Investors Service analysts led by Ted Hampton, said in a report on Wednesday. The likelihood of "credit-negative strategies" like deferring near-term pension contributions may also rise, Moody's said.

Even with the graduated income tax failure, Illinois has other options available, Carol Spain, S&P's director of U.S. public finance, said in an emailed statement. Illinois will need to look at other budget-balancing steps, Eric Kim, head of state government ratings for Fitch, said in an emailed statement.

Alternatives for Illinois include more borrowing, tapping the Federal Reserve's Municipal Liquidity Facility for a second time, cutting spending or raising revenue with sales taxes and a higher flat income tax rate, Kim said.

### **'Budget Crisis'**

Previously, Pritzker has said budget cuts of 15% over two years or potentially borrowing from the Fed again are possible if the amendment failed and no more federal aid comes through.

"While the fair tax would have helped to address our budget crisis with the least damage to the working families of Illinois, the millionaires and billionaires opposed it to protect their own wallets, deceiving the public about its purpose and they ended up prevailing," Pritzker said Wednesday. "Sometimes politics works against the best solutions."

The business closures due to Covid-19 since March have added to the fiscal challenges and all three major rating companies have a negative outlook on Illinois, signaling that it could be the first state stripped of its investment grade rank. Such a step would likely add to its financial problems by saddling the government with higher interest bills and preventing many mutual funds from owning its debt.

Pritzker said Wednesday he considers the state's investment grade rating "very important" and will continue to work to fix the state's structural financial problems to avoid it going lower.

"In this election, Illinois voters sent a resounding message that with an \$8 billion deficit and two

massive tax hikes in the last ten years, we cannot trust Springfield Politicians with another tax hike,” the Coalition to Stop the Proposed Tax Hike Amendment, said in an emailed statement late Tuesday.

“We are undoubtedly disappointed with this result but are proud of the millions of Illinoisans who cast their ballots in support of tax fairness in this election,” Quentin Fulks, chairman of the Vote Yes For Fairness campaign, which supported the measure, said in an emailed statement on Wednesday.

“Now lawmakers must address a multi-billion dollar budget gap without the ability to ask the wealthy to pay their fair share,” Fulks said. “Fair Tax opponents must answer for whatever comes next.”

If enacted, the new graduated rates would have brought in \$1.2 billion for fiscal 2021, which began July 1, and \$3.1 billion for a full year, according to state estimates.

## **Red Ink**

It was no panacea. Illinois has about \$8.3 billion of unpaid bills, some \$137 billion of unfunded pension liabilities, and its rainy day fund has just \$68,459. With the bond market demanding high penalties to own its debt, it’s one of just two that have borrowed from the emergency lending facility the Federal Reserve rolled out after the pandemic.

“Illinois — it’s not a stretch to say — it was a net loser in the preliminary aftermath of the election,” said Ty Schoback, senior analyst for Columbia Threadneedle Investments, which owns Illinois debt as part of its \$17 billion in muni assets under management. He cited the lack of expected Blue Wave and the graduated tax failure.

The state has budget flexibility and sufficient liquidity for now, he said, adding that market participants will look for willingness to fix problems with structural changes that may be unpopular rather than only borrowing more or one-time tactics.

“I don’t think the rating agencies have an itchy trigger finger and I think they are going to give the state a little bit of time,” Schoback said. “All that being said, the state is definitely on the clock with rating agencies and investors.”

## **Bloomberg Markets**

By Shruti Singh

November 4, 2020, 8:56 AM PST Updated on November 4, 2020, 2:48 PM PST

---

### **[Illinois Isn’t a Junk-Rated Credit. It’s Just Trading That Way After Voters Rejected a Progressive Tax.](#)**

Illinois’ bond prices fell after voters rejected a graduated income tax proposal on Tuesday’s ballot. And while its debt hasn’t been downgraded, it is already trading like junk.

Several years after its budget-setting process was frozen by political gridlock, the state has been taking steps to increase revenue and reduce its reliance on bond markets—partly because its bonds are rated BBB-, just one tier above junk.

The state's constitution mandates a flat tax, and overturning that policy would have required 60% of people voting on the amendment to approve it, or more than 50% of all voters casting ballots, according to Moody's.

Instead, about 55% of voters rejected the measure, according to the Associated Press. A graduated income tax would have brought in an estimated \$1.3 billion this year, according to Fitch.

It is also looking less likely that states (or other stressed local governments) will receive substantial amounts of aid from Congress this year, as strategists say there is a higher probability of a divided government in Washington.

So Illinois' bonds have sold off. Yields of bonds maturing in five years have climbed roughly half of a percentage point since last Friday, to 3.5%, according to Bloomberg data.

The selloff has been even sharper over the past seven days, and the yields of six- and seven-year bonds have increased most on the news—the benchmark yields on Illinois' six-year bonds have climbed to 3.8% from 3% since last week.

S&P, Moody's, and Fitch all assign Illinois their lowest investment-grade rating, the equivalent of BBB-. But their current yields are closer to junk-rated municipal bonds, rather than investment-grade debt, according to Bloomberg data.

The Bloomberg Barclays High-Yield GO Index has a yield of 3.8% with a maturity of 5.4 years. The index of BBB-rated municipal bonds yields 2.6%, with roughly the same maturity.

To put it in simpler terms: The fact that Illinois' five- and six-year bond yields are trading around 3.5% and 3.8% shows that investors think the state's credit is closer to junk-rated municipals than its investment-grade peers.

"Now this is where it gets interesting, to see if the rating agencies actually have the chutzpah to pull the trigger on the first ever U.S. state junk rating," wrote Eric Kazatsky, analyst with Bloomberg Intelligence, in a Wednesday note.

To be sure, Illinois still has options to raise revenue that it can pursue during coming legislative sessions, according to a Wednesday note from Moody's.

If the state raises its flat income tax by 0.7 percentage points to roughly 5.7%, it could bring in about \$3 billion of additional revenue, says Moody's, the same amount that it had projected it would raise under a proposed graduated income tax.

Gov. J.B. Pritzker has also asked state agencies to identify potential spending cuts: 5% for the current fiscal year and 10% for the coming fiscal year.

But to free up \$3 billion, "the state would have to impose across-the-board reductions of almost 11%, based on actual 2019 figures," Moody's wrote. "This degree of austerity would have significant implications for delivery of core education, healthcare, corrections and other services."

It can also tap the Federal Reserve's Municipal Liquidity Facility again, says Fitch. If the state does end up getting downgraded by ratings firms, however, it will need to pay higher interest rates to use the facility.

As the state weighs its options, "Illinois' upcoming post-election legislative session could be particularly consequential this fiscal year," wrote Eric Kim, head of state government ratings at

Fitch, in a Wednesday note.

## **Barron's**

By Alexandra Scaggs

Nov. 5, 2020 9:15 am ET

---

### **Municipal Bond Market Update - November Edition**

#### **Investors are closely watching U.S. election results as expectations for a clear outcome dwindle.**

As votes continue to be counted, investors are paying close attention to states such as Michigan, Pennsylvania, and Wisconsin. Market participants fear a contested election due to the potential for increased volatility amid concerns of a drawn-out count. The election has shifted attention toward mail-in ballots and final tallies, away from the groundbreaking quarter of economic growth reported last week.

On October 29, the Bureau of Economic Analysis (BEA) released U.S. GDP for the third quarter of 2020. The BEA estimates that real GDP accelerated at a record 33.1 percent annualized rate as the economy recoups lost ground from the first half of the year. The historic recovery reflects "continued efforts to reopen businesses and resume activities that were postponed or restricted due to COVID-19" the commerce department reported.

Despite the U.S. economy's blockbuster rebound, election uncertainty and further stimulus bill delays led to a spooky October for investors as broad-based equity and fixed income markets ended the month lower.

#### **Muni Market Performance**

Municipals were not exempt from the month's frightening performance as the broad market, measured by the Bloomberg Barclays Municipal Bond Index, concluded the month 0.30% lower. Despite tax-exempt's lackluster month, the asset class outperformed taxable bonds with Treasuries ending the month 0.94% lower and the Bloomberg US Gov/Credit Index finishing 0.60% lower.

The AAA municipal benchmark yield curve continued its steepening trajectory, with yields in the two-year range concluding the month 4.8 basis points (bps) higher while ten and thirty-year yields ended 8.2 and 9.7 bps higher, respectively. As evidenced by the steepening yield curve, longer dated muni bonds (22+ years to maturity) lagged shorter dated peers for the month, producing a total return of negative 0.43%. Municipals with maturities in the one to five-year range led performance for the month, returning 0.15%, while intermediate term munis in the five to ten-year range ended 0.26% lower.

October marks six-straight months of high-yield (below investment grade) muni outperformance. The lower quality asset class ended the month in positive territory with a total return of 0.18%, according to the Bloomberg Barclays Muni High Yield Index. Despite the streak of positive relative performance, lower quality paper remains behind year-to-date, struggling to recoup losses from March's drawdown. Through the October month end, the Bloomberg Barclays Municipal Bond Index has returned 3.02% for the year whereas the Bloomberg Barclays High Yield Municipal Bond Index

has returned 0.54%.

## **Supply & Demand Situation**

Municipal issuance saw a record setting month as issuers seek to capitalize on historically low interest rates. October's almost \$70 billion in new issue deals came to market against the backdrop of political uncertainty as municipalities rushed ahead of the election. Year-to-date supply was 26.6 percent higher than the same time last year, amounting to a total volume of nearly \$415 billion. Tax-exempt municipals continue to trade favorably despite the heightened political discourse. The two-year muni-to-Treasury ratio, which represents muni yields relative to Treasuries, ended October at 129 percent while the ten- and thirty-year ratios both ended the month at 107 percent.

As final tallies are counted in the U.S., municipal bonds may continue to see volatility as investors search for clarity around potential income tax changes and additional stimulus measures.

**municipalbonds.com**

by Corey Boller

Nov 04, 2020

---

## **[The Surprising Durability of OZ Multifamily in a Pandemic, with Pete LaMassa.](#)**

What are the biggest questions on the minds of Opportunity Zone investors? And what have been some of the most surprising real estate market outcomes from the coronavirus pandemic?

Pete LaMassa is Opportunity Zone deal captain and managing director at Bridge Investment Group, a vertically integrated real estate private equity firm with a \$1 billion Opportunity Zone strategy.

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

[Continue reading.](#)

**opportunitydb.com**

By Jimmy Atkinson

November 4, 2020

---

## **[Higher Education: The Future is Not the Past](#)**

**Date:** Friday, November 20, 2020

**Time:** 12:00 – 1:30 pm

**Location:** Zoom Webinar

## **Details:**

The coronavirus pandemic has increased near-term risks for higher education institutions. Over the next two years, colleges will confront declining revenues and expense pressures, which will force difficult decisions around personnel and programs. In addition to budget strains, colleges will focus on bolstering liquidity and managing debt. Prospects for additional federal relief remain uncertain.

Over the longer term, shifting demographics, technological innovation, consumer preferences, and governmental funding/policies will influence the pace of change for the sector. What will the higher education landscape look like in the future? How will liberal arts colleges adapt? Will the role of public universities change? What are the opportunities and constraints for the sector, and how will these impact credit quality?

Our panelists will provide a broad perspective on all of these issues from several points of view.

## **Our Speakers:**

### **Dr. Sean Decatur, President - Kenyon College**

Dr. Decatur is an award-winning biophysical chemist and an emerging voice in the national conversation about higher education. He has a clear-eyed view of the challenges facing some traditional liberal arts colleges and is a compelling presenter on changes confronting the higher ed industry.

### **Dr. Aaron Thompson - Kentucky Council on Postsecondary Education**

Dr. Thompson was named president of the Council On Postsecondary Education in 2018 after serving for four years as senior vice president for academic affairs and for five years as executive vice president. In total, his leadership spans 27 years across higher education, business and numerous nonprofit boards. The public universities in Kentucky face a number of challenges around demographics, state funding, and pensions. Dr. Thompson will speak both about the national landscape for public universities and how this might play out in a state like Kentucky.

### **Jim Hundrieser, Vice President of Consulting - National Association of College and University Business Officers (NACUBO)**

Mr. Hundrieser oversees NACUBO's work in providing institutions new strategies to match ambition with aspiration. He focuses on revenue growth, new program development, financial restoration, building capacity, providing pragmatic solutions, and conducting operational assessments. He has served as an institutional vice president at two private and one public university.

The discussion will be moderated by Susan Fitzgerald, Associate Managing Director and Manager of the Higher Education Group at Moody's Investors Service.

**Cost:** Free for members of MAGNY and NFMA, \$40 for non-NFMA members

To register for the Higher Education webinar on November 20, 2020 at 12:00 PM ET, [click here](#).

---

## **[GASB Outlook E-Newsletter Fall 2020.](#)**

[Read the Newsletter.](#)

---

## [Get Short-Term Municipal Bond Exposure in 2021 with “BSML”](#)

Blue wave or red wave, it's important to get bond exposure to offset equities in a portfolio, especially with market forces still tilting on the side of uncertainty. As far as where to look for special opportunities in the bond market, municipal bonds are worth a look to capitalize on short-term movements following a presidential election with the Invesco BulletShares® 2021 Municipal Bond ETF (BSML).

Municipal bonds give investors exposure to a bond market that historically has low default rates. While a company can fold, local government typically won't so the safety of investing in debt paid for by taxpayers adds that extra layer of assurance.

As for BSML, the fund is based on the Invesco BulletShares® USD Municipal Bond 2021 Index. The Fund will invest at least 80% of its total assets in municipal bonds that comprise the index. The Index seeks to measure the performance of a portfolio of US dollar-denominated, issued by US state, state agencies, or local governments with effective maturities in 2021.

[Continue reading.](#)

ETF TRENDS

by BEN HERNANDEZ on NOVEMBER 5, 2020

---

## [HYD: High Yield Munis Still Face Plenty Of Headwinds](#)

### **Summary**

- High yield munis continue to face enormous macro-pressure, as current revenues for local and state governments are well below their pre-pandemic levels.
- HYD holds a large amount of non-rated and non-investment grade bonds. These will be the first to face selling pressure if states do not get a better handle on their finances.
- The fund's top state is Illinois, which is notorious for its budget problems. This past week, residents voted down a proposal to move to a progressive income tax, challenging future revenues.

[Continue reading.](#)

### **Seeking Alpha**

Nov. 6, 2020

- 
- **Ed. Note:** We have absolutely no idea why we agreed to publish today, given that this is a time for faith, family, solemn reflection, and mayonnaise-procurement. We refer, of course, to [National Sandwich Day](#). And now, a moment of silence for BCB's patron saint, [John Montagu, 4th Earl of Sandwich](#).
  - [Goldman, Citi, BofA, Others to Face Muni Bond Price-Fixing Suit.](#)
  - [Fitch Ratings: ESG in Public Finance 2020 White Paper](#)

- [Treasury Publishes Updated FAQs – Coronavirus Relief Fund Payments for State, Local, and Tribal Governments – Ballard Spahr](#)
- [Coronavirus Relief Fund: The Prime Recipient Perspective – GFOA](#)
- [BDA and Greenwich Associates Partner on Research Report – Fixed Income in an Unprecedented Year](#)
- [Introducing the Fitch Analytical Comparative Tool \(FACT\) D-Trend for U.S. State Demographic and Economic Analysis \(Description and User Guide\)](#)
- [Real Estate Recovery, LLC v. Branson Hills Facility Infrastructure Community Improvement District](#) – Court of Appeals holds, as a matter of apparent first impression, that – in light of the controlling provisions of the CID Act and the Jones-Munger Act – assessments levied or imposed by a community improvement district against property after a post-third-offering tax sale survive, such as to impose a continuing lien on the property.
- And finally, I Believe You're Thinking of Sea Captains is brought to us this week by [Bauer v. County of Erie](#), in which driver was rear-ended in a snowstorm. Rear-endin' dude got out to check on things and offered driver a lift. Driver declined, stating his intention to stay with his car. Cut to three days later, when driver is found frozen solid in said car. We're aware of captains bravely going down with their ships, but had no idea this practice also applied to cars. Maybe the guy's first clue should have been the absence of a string quartet playing "Nearer My God to Thee" on his hood.

---

## UTILITY FEES - CALIFORNIA

### [Malott v. Summerland Sanitary District](#)

**Court of Appeal, Second District, Division 6, California - October 19, 2020 - Cal.Rptr.3d - 2020 WL 6128117 - 20 Cal. Daily Op. Serv. 10,825 - 2020 Daily Journal D.A.R. 11,217**

Owner of 30-unit apartment building filed an administrative mandamus petition against sanitary district alleging it imposed an excessive wastewater disposal charge for the property without regard to the proportional cost of providing wastewater service for her property, in violation of the California Constitution.

The Superior Court dismissed the petition on the ground that owner did not exhaust her administrative remedies. Owner appealed.

The Court of Appeal held that:

- Owner was not required to exhaust administrative remedies by appearing at sanitary district's public hearing, and
- Declaration of owner's expert on utility and wastewater service rates should have been admitted.

Owner of 30-unit apartment building was not required to exhaust administrative remedies by appearing at sanitary district's public hearing before bringing action against the district for allegedly violating California Constitution by imposing excessive wastewater disposal charge for the property without regard to proportional cost of providing wastewater service, despite the fact owner elected to file an administrative mandamus petition instead of a declaratory relief action; owner's petition asked for ruling that the district's method of calculating residential rates was invalid, an appropriate type of relief in a declaratory relief action, and owner claimed she had no adequate forum at the public hearing to resolve evidentiary issues involved in a challenge to the rate structure.

Declaration of expert on utility and wastewater service rates should have been admitted by the court in proceedings on the challenge brought by owner of 30-unit apartment building to sanitary district's

allegedly excessive wastewater disposal charge for the property, which district allegedly imposed without regard to proportional cost of providing wastewater service, in violation of California Constitution; expert said the district used a flawed system of determining and allocating costs for residential users, the result of which was that it was overcharging apartment buildings and undercharging single-family residences, and a trier of fact accepting expert's claims could reasonably find rate payers in apartment units were being substantially overcharged by the district.

---

## **LIABILITY - CONNECTICUT**

### **[Costanzo v. Town of Plainfield](#)**

**Appellate Court of Connecticut - October 13, 2020 - A.3d - 200 Conn.App. 755 - 2020 WL 5988227**

Estate of young child who drowned in swimming pool brought action to recover damages against town and town's employees, alleging, among other claims, municipal defendants failed to conduct proper inspection of pool.

Municipal defendants filed an apportionment complaint against owners of property where pool was located and their former tenants who had pool constructed. The Superior Court sustained estate's objections to apportionment complaint and dismissed municipal defendants' complaint. Municipal defendants appealed.

The Appellate Court held that complaint alleged negligence, and not recklessness, and thus municipal defendants could seek apportionment as to negligence of other defendants.

After young child drowned in swimming pool, child's estate alleged in complaint that town's employees, and thus town, had actual notice that pool was constructed in violation of applicable laws and/or that pool constituted hazard to health or safety and failed to conduct an inspection, accordingly, the complaint's allegations were made pursuant to statutory exception to municipal immunity which required proof of actual notice, but not recklessness, and thus, complaint alleged negligence, and not recklessness, on the part of the municipal actors, and town and town's employees could therefore seek apportionment as to negligence of owners of property where pool was located and their former tenants who had pool constructed.

---

## **MUNICIPAL ORDINANCE - KANSAS**

### **[City of Wichita v. Trotter](#)**

**Court of Appeals of Kansas - September 25, 2020 - P.3d - 2020 WL 5740895**

Defendant was convicted in the District Court of operating a club without an entertainment-establishment license. Defendant appealed.

The Court of Appeals held that:

- License ordinance constituted a permissible prior restraint on the time, place, and manner of expression, and thus ordinance did not infringe upon defendant's free expression under the First Amendment;
- License ordinance was not unconstitutionally vague, either on its face or as applied;
- License ordinance was not an unconstitutionally overbroad infringement on First Amendment

- protected expression;
- Defendant lacked standing to contest ordinance's inspection requirement;
  - Sufficient evidence supported finding that night club was open to the public;
  - Sufficient evidence supported finding that person operating sound equipment at night club was a disc jockey (DJ);
  - Prosecutor's comments in closing argument were within permissible scope of argument, thus, did not constitute prosecutorial-error;
  - Prosecutor's comments in rebuttal argument were within permissible scope of argument, thus, did not constitute prosecutorial-error; and
  - Trial court's response to jury's mid-deliberation question was not an abuse of discretion.
- 

## **COMMUNITY IMPROVEMENT DISTRICT ASSESSMENTS - MISSOURI**

### **[Real Estate Recovery, LLC v. Branson Hills Facility Infrastructure Community Improvement District](#)**

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

Real Estate Recovery, LLC ("RER") appealed from the trial court's summary judgment in favor of Branson Hills Facility Infrastructure Community Improvement District ("the District"). RER argues that the trial court erred in entering summary judgment in favor of the District, in that the District's assessments did not survive the post-third-offering sale at which RER purchased the four parcels of real estate ("the Parcels")

This case derived from the Taney County Collector's ("the Collector") post-third offering for delinquent community improvement district ("CID") assessments levied by the District against the Parcels, which RER purchased at the offering. RER subsequently filed a petition to quiet title. Thereafter, RER and the District both filed motions for summary judgment. RER argued (in relevant part) that, pursuant to the Community Improvement District Act (the "CID Act") and the Jones-Munger Act, RER's Collector's Deeds terminated all District special assessments as to the Parcels.

The District—also relying on the Jones-Munger Act and the CID Act—argued that the sale did not impair the District's power or authority to impose and levy "future ... special assessments" within the boundaries of the District, and that either RER's Collector's Deeds were invalid or RER owed the delinquent 2015 assessment amount, as RER was required (and failed) to pay that sum before receiving its Collector's Deeds.

The trial court entered summary judgment in favor of the District, and against RER. RER appealed.

In the appeal, the Court of Appeals noted that the sole and narrow issue before it was whether — in light of the controlling provisions of the CID Act and the Jones-Munger Act — assessments levied or imposed by the District against the Parcels after the post-third-offering sale survive, such as to impose a continuing lien on the Parcels (and a corresponding obligation on RER to remit payment for such subsequently levied or imposed assessments).

The Court of Appeals held that assessments levied or imposed by the District against the Parcels after the post-third-offering sale survive, such as to impose a continuing lien on the Parcels.

---

## **QUIET TITLE - NEW MEXICO**

### **[Nash v. Board of County Commissioners of Catron County](#)**

**Supreme Court of New Mexico - October 19, 2020 - P.3d - 2020 WL 6144594**

Landowners brought separate actions to quiet title to real estate located in two counties, and defendant counties asserted sovereign immunity.

The District Court denied county's motion to dismiss, and the county appealed. The District Court granted the county's motion to dismiss, and the landowners appealed. Appeals were consolidated. The Court of Appeals affirmed in part, reversed in part, and remanded, holding that the State and its political subdivisions are immune from quiet title actions. Landowners petitioned for writ of certiorari.

The Supreme Court held that:

- Legislature intended statute to create a limited waiver of governmental immunity from being named a defendant in actions to quiet title, and
- It would decline to exercise its discretionary authority to reach landowners' constitutional argument.

Legislature intended statute to create a limited waiver of governmental immunity from being named a defendant in actions to quiet title; title of statute clarified legislative intent to create a limited waiver of immunity requiring consent of the state to be named in a lawsuit where the state holds or claims a lien against real or personal property and where that lien is being adjudicated or foreclosed, full title of enrolled and engrossed bill was included as an annotation when the law was originally codified, that annotation was likewise included without alteration or amendment when the statute was recompiled, and when legislature enacted statute to effectively establish statutory immunity, it did so aware of the limited waiver it had previously granted.

Supreme Court would decline to exercise its discretionary authority to reach landowners' constitutional due process argument regarding claims to quiet title against counties, where landowners did not present an appropriately developed case, one where sovereign immunity, interposed to bar quiet title actions, had denied landowners a remedy for the taking of property without compensation.

---

## **IMMUNITY - NEW YORK**

### **[Bauer v. County of Erie](#)**

**Supreme Court, Appellate Division, Fourth Department, New York - October 9, 2020 - N.Y.S.3d - 2020 WL 5987012 - 2020 N.Y. Slip Op. 05623**

Commuter's estate brought wrongful death action against town and police department alleging negligent failure to rescue commuter who was found dead in vehicle three days after becoming stuck in snow bank during a town-issued travel ban during severe winter storm and making calls to town's 911 dispatcher.

The Supreme Court, Erie County, granted summary judgment in favor of town and police department. Estate appealed.

The Supreme Court, Appellate Division, held that:

- Town and police department were acting in a governmental capacity for purposes of municipal negligence, and
- Town and police department did not voluntarily assume a duty of care to commuter to form a special relationship.

Town and police department were acting in a governmental capacity when a commuter made calls to town's 911 dispatcher during severe winter storm in which town had issued travel ban, and thus commuter's estate was required to prove special duty in order to impose negligence liability on town and police department for failing to rescue commuter, who was found dead in vehicle three days after becoming stuck in snow bank and making 911 calls.

Town and police department did not voluntarily assume a duty of care to commuter that would generate reasonable reliance, and thus there was no special relationship on which to impose negligence liability on town and police department for failing to rescue commuter who was found dead in vehicle three days after becoming stuck in snow bank during a town-issued travel ban during severe winter storm and making calls to town's 911 dispatcher; town and police department did not assume, through promise or action, any duty to act on commuter's behalf, and any alleged reliance upon representations made by town or police department was not justifiable.

---

## **IMMUNITY - TEXAS**

### **[City of El Paso v. Aguilar](#)**

**Court of Appeals of Texas, El Paso - October 9, 2020 - S.W.3d - 2020 WL 5987623**

Pedestrian brought action against city alleging that she was knocked down and run over by float during city's parade, claiming, under the Texas Tort Claims Act (TTCA), city was negligent in failing to properly oversee and control parade traffic, and also claiming that city negligent in training and supervision of employee who drove the truck that pulled the float, and that city was liable for conduct of employee either by vicarious liability or respondeat superior.

After a hearing, the District Court denied city's plea to the jurisdiction. City appealed.

The Court of Appeals held that:

- Pedestrian alleged city operated motor vehicle that caused her injury, and thus pleaded facts supporting a waiver of city's immunity under TTCA, and
- Pedestrian did not plead facts establishing city waived its immunity under TTCA's "use of tangible personal ... property" waiver of immunity.

Pedestrian pleaded, and supported with evidence, that city used or operated the motor vehicle that caused her injury by directing the driver of that motor vehicle to move it forward, and thus pleaded, and supported with evidence, jurisdictional facts supporting a waiver of city's immunity under Texas Tort Claims Act (TTCA); although pedestrian did not allege that driver of truck that allegedly caused her injury was city employee, it was sufficient she alleged driver moved truck at the direction of a city employee acting within the course and scope of his employment, pedestrian alleged parade generally, and flow of parade floats specifically, were conducted under direction and supervision of city parks department, and city did not controvert evidence of city parks department's control of parade.

Pedestrian's pleadings did not contain sufficient facts to affirmatively demonstrate city waived its immunity under the Texas Tort Claims Act's (TTCA) "condition or use of tangible personal ... property" waiver of immunity, in pedestrian's negligence action against city for injuries sustained during city parade, where pedestrian's pleadings related only to the use or operation of a motor vehicle by the city, and there was no allegation, evidence, or even mention of any tangible personal property causing pedestrian's injury, other than the motor vehicle.

Pedestrian's pleadings which alleged that city was liable for negligently failing to properly oversee and control traffic during parade, and for negligently training and supervising its employee did not contain sufficient facts to affirmatively demonstrate city waived its immunity under the Texas Tort Claims Act; neither pedestrian's pleadings nor the evidence submitted to the trial court demonstrate that these allegations fall within any waiver of immunity applicable to city.

---

## **BALLOT INITIATIVES - WASHINGTON**

### **[Garfield County Transportation Authority v. State](#)**

**Supreme Court of Washington - October 15, 2020 - P.3d - 2020 WL 6106952**

Several counties, cities, associations, and private citizens challenged the constitutionality of initiative to limit motor vehicle taxes and fees, under various provisions of the Washington Constitution.

After several parties, including initiative sponsors, a group of taxpayers, county, transit groups, and environmental groups were granted leave to intervene, most parties moved for summary judgment and Superior Court found a few provisions unconstitutional, but severable, and otherwise upheld the initiative. Challengers appealed.

The Supreme Court held that:

- When an initiative has a general title, all that is required by constitutional provision prohibiting bills from embracing more than one subject is rational unity between the general subject and the incidental subdivisions, overruling *Price v. Evergreen Cemetery Co. of Seattle*, 57 Wash.2d 352, 357 P.2d 702;
- Initiative violated constitutional prohibition on bills embracing more than one subject;
- Initiative violated constitutional provision requiring that subject to be expressed in the title; and County and municipal plaintiffs did not violate statute prohibiting elective officials, their employees, and persons appointed to or employed by public offices or agencies, to authorize use of any of the facilities of a public office or agency for promotion of or opposition to any ballot proposition.

Voter initiative measure limiting vehicle taxes and fees violated constitutional prohibition on bills embracing more than one subject; initiative included a specific directive to regional transit authority to retire, defease, or refinance bonds, which was not germane to limiting vehicle taxes and fees and the provisions of the initiative that carried out that subject, and initiative combined general and specific provisions, and unrelated local and statewide effects.

Voter initiative measure limiting vehicle taxes and fees violated constitutional provision requiring that subject to be expressed in the title; statement in ballot title that initiative would "limit annual motor-vehicle-license fees to \$30, except voter approved charges," was deceptive and misleading since the average informed lay voter would conclude that voter approved taxes, such as those used to fund local and regional transportation projects across the state, would remain, when in fact

initiative would eliminate a large number of voter-approved charges and remove the very statutory mechanism by which voters could approve charges in the future.

County and municipal plaintiffs who challenged constitutionality of initiative to limit motor vehicle taxes and fees did not violate statute prohibiting elective officials, their employees, and persons appointed to or employed by public offices or agencies, to authorize use of any of the facilities of a public office or agency for promotion of or opposition to any ballot proposition; at the time of the court challenge, initiative was no longer “proposed to be submitted to the voters,” but rather, it was an enrolled piece of legislation.

---

## **[Fitch Ratings: ESG in Public Finance 2020 White Paper](#)**

[Read the Fitch White Paper.](#)

---