Bond Case Briefs

Municipal Finance Law Since 1971

S&P: Updated Activity Estimates For U.S. Transportation Infrastructure Show Public Transit And Airport Operators Still Face A Long Recovery

Key Takeaways

- U.S. public transit and airport sectors face the longest recovery relative to other U.S. transportation subsectors, with our current baseline activity estimates for 2021 compared with pre-COVID-19 levels showing annualized declines of approximately 50% for public transit, and 40% for airports; and public transit ridership recovering to approximately 15% below pre-COVID-19 levels by the end of 2023 and enplanements returning to or near pre-pandemic levels in 2024 for most airports.
- We believe there is still a relatively high degree of uncertainty regarding the demand for transportation infrastructure over the next six to 12 months, which will depend on the conquering of COVID-19 and the economic effects of the pandemic.
- Outlooks on individual debt ratings on public transit and airport-related issuers sensitive to changes in ridership and air travel demand, respectively, are likely to remain negative, although we could revise outlooks if we believe there is a sustained and sufficient recovery and stabilization in activity levels, and forward-looking financial metrics we consider achievable and aligned with current ratings.
- In 2021, we could revise the outlook to stable from negative on debt ratings on transportation infrastructure providers whose finances are less sensitive to changes in user behavior compared with pre-COVID-19 levels.

Continue reading.

13 Jan, 2021

S&P Outlook For U.S. Not-For-Profit Transportation Infrastructure: Light At Tunnel's End – But How Long Is The Tunnel?

Sector View: Mostly Negative

S&P Global Ratings' 2021 view of business conditions and credit quality across U.S. public transportation infrastructure is negative for the airport, mass transit, parking, and toll road sectors and stable for the ports and federal grant-secured sectors.

Continue reading.

13 Jan, 2021

[S&P Outlook For U.S. Public Power And Electric Cooperative Utilities: Ratings Should Remain Resilient]

Sector View: Stable

We expect most of the sector's ratings to remain stable in 2021. Nearly all the sector's utilities are displaying resilience in the face of the pandemic's disruptions. We expect low prices for natural gas, and cost cutting measures, will continue to temper the financial pressures on the economy and electric sales. Nevertheless, we recognize that financial performance and credit ratings could be pressured, particularly at utilities that rely on electric revenues from customers hardest hit by the pandemic, such as businesses engaged, and residential ratepayers employed, in the hospitality and travel industries, or utilities required to make transfer payments to offset declines in municipal tax revenues.

Continue reading.

14 Jan, 2021

[Fitch: Downgrades Exceed Upgrades, U.S. Public Finance 2020 Annual Ratings Update Finds]

Fitch Ratings-New York-11 January 2021: Annual U.S. public finance downgrades exceeded upgrades for the first time since 2013, according to Fitch Ratings in a new report.

In 2020, Fitch upgraded 100 U.S. public finance ratings and downgraded 181 ratings, compared to 173 upgrades and 105 downgrades in 2019. There were 93 Positive Rating Outlooks/Watches and 441 Negative Rating Outlooks/Watches as of year end (2.8% and 13.3% of the portfolio respectively, compared to 3.3% and 3.8% at YE 2019).

Coronavirus-related credit impacts resulted in 69 downgrades and 305 Negative Outlook/Watch changes in 2020. Among the most impacted sectors were local governments (26 downgrades, 130 Negative Outlook/Watch), not-for-profit hospitals (13 downgrades, 19 Negative Outlook/Watches), higher education and non-profits (14 downgrades, 17 Negative Outlook/Watches), and transportation (7 downgrades, 118 Negative Outlook/Watches). Coronavirus-related pressures will persist in 2021; however, most issuers will be able to maintain their credit quality.

Fitch released its 2021 sector outlooks in December 2020. Six out of eight sectors have 'Stable' sector outlooks for 2021, indicating our expectation that credit pressures will be similar to those experienced in 2020. Fitch's sector outlooks for higher education and transportation are 'worsening' and 'improving', respectively.

'U.S. Public Finance Rating Actions Report and Sector Updates: 2020 Annual' is available at 'www.fitchratings.com'.

Contact:

Arlene Bohner
Managing Director, Head of U.S. Public Finance Ratings
+1 212-908-0554
Fitch Ratings, Inc.

300 West 57th Street
New York, NY 10019

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

Additional information is available on www.fitchratings.com

Fitch Ratings Updates U.S. Housing Finance Agencies General Obligation (GO) Rating Criteria.

Fitch Ratings-New York/Bogota-13 January 2021: Fitch Ratings has published an updated criteria report titled 'U.S. Housing Finance Agencies General Obligation Rating Criteria.' The report replaces the existing criteria dated Feb. 6, 2020.

Updates to the criteria include the incorporation of a Key Rating Factors table that outlines the attribute assessments for each of the Key Rating Drivers. The Key Rating Driver headings were updated in line with the master revenue criteria, 'Public Sector, Revenue-Supported Entities Rating Criteria.' Additionally, the debt-to-equity ranges in the Financial Profile assessment were updated to reflect Housing Finance Agencies' (HFAs') average historic performance for this ratio, which distinguishes HFAs' leverage position.

The updated criteria report also describes the assignment of Issuer Default Ratings (IDRs). Assigning IDRs aligns default risk ratings in this sector to those assigned by other groups across Fitch's global rating platform. With the publication of the criteria, Fitch will assign an IDR to each Fitch-rated HFA with a general obligation (GO) rating. The IDR then informs issue-specific ratings for Fitch-rated securities backed by the HFA's GO. In general, all of an issuer's individual GO securities will be assigned the same rating as the IDR. For more information on IDRs, see Fitch's master criteria 'Public Sector, Revenue-Supported Entities Rating Criteria.'

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

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

Contact:

Mikiyon Alexander
Senior Director
+1-646-582-4796
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Kasia Reed
Director
+1-646-582-4864

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

Additional information is available on www.fitchratings.com

Fitch Ratings Assigns ESG Relevance Scores for USPF Housing Credits.

Fitch Ratings-New York-13 January 2021: Fitch Ratings has assigned Environmental, Social and Governance Relevance Scores (ESG.RS) to its U.S. Public Finance housing credits. ESG.RS are observations of the extent to which Environmental, Social and Governance (ESG) risks affect credit profiles. They relate to individual rating decisions and may change when ratings are reviewed.

The scores articulate the relevance and materiality of an E, S or G factor along with positive or negative impact indicators. Currently, 42% of housing credits have a positive ESG impact indicator related to affordable housing loan programs.

Except for matters that address loan programs and Military Housing Projects (MHPs), the highest level of ESG credit relevance, if present, is generally a score of ‘3’ indicating ESG issues are credit neutral or have only a minimal credit impact on the entity. This is either due to their nature or the way in which they are being managed. Elevated scores of ‘4’ and ‘5’ reflect increased relevance, with a score of ‘5’ indicating a single identified issue that is highly relevant to the rating: a key rating driver.

For elevated scores assigned to loan programs, an ESG.RS of ‘4’[+] reflects the positive exposure of social impacts on the rating. Specifically, the score reflects customer welfare as it relates to fair messaging and privacy & data security given the focus on fair housing practices by state housing finance agencies (HFAs). Fair housing practices include compliance risks involving fair lending practices, mis-selling, repossession/foreclosure and consumer data protection. Since strong fair housing practices and customer protection contribute to reduced expected losses, this has a positive impact on the rating and is relevant in conjunction with other factors.

In certain cases, an elevated ESG.RS of ‘4’[+] was assigned to reflect the social impact of human rights, community relations, access & affordability for programs with the majority of assets secured by Government Sponsored Entity (GSE) guarantees. The GSE guarantees address access and affordability while driving strong performance. This has a positive impact on the credit and is relevant to the rating in conjunction with other factors. Social impacts are the only occurrences of elevated scores for loan programs.

MHPs with elevated scores of ‘4’ or ‘5’ incorporate exposure to all three ESG impacts. Elevated scores for environmental risks were driven by waste & hazardous materials management along with ecological impacts. Assignment of an ESG.RS of ‘5’ was based on the project’s level of risk exposure to these issues, which were considered key rating drivers.

Exposure to social impacts for MHPs that resulted in an ESG.RS of ‘4’ incorporated customer welfare in the context of fair messaging, privacy & data security. The analysis of social impact for loan programs centers on fair housing practices, whereas for MHPs it addresses quality and safety of products and services, along with data security.

Governance risk for MHPs that resulted in an ESG.RS of ‘4’ incorporated management strategy for moisture remediation issues and oversight challenges related to controlling project expenses. This has a negative impact on the credit profile and is relevant to the rating in conjunction with other factors.

While it is uncommon for an ESG factor to be a main driver of credit risk or a rating action, ESG issues can often weigh on rating decisions for MHPs. We will continue to assess these factors as part of the overall credit analysis when we consider them to have an impact on the rating within the rating horizon.

For more information on Fitch's ESG Relevance Scores, visit www.fitchratings.com/esg

Contact:

Mikiyon Alexander
Senior Director
+1 646 582 4796
Fitch Ratings, Inc.
300 W. 57th Street,
New York, NY 10019

Kasia Reed
Director
+1-646-582-4864

Teresa Galicia
Associate Director
+1-312-368-2083

Jeurys Grullon
Associate Director
+1 646 582 3605

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

Additional information is available on www.fitchratings.com

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22 Nonprofit Hospitals Hit With Credit Downgrades Last Year, Fitch Says.

Credit downgrades outpaced upgrades for U.S. public finance in 2020, and nonprofit hospitals were among the most affected sectors, according to a new report from Fitch Ratings.

In 2020, Fitch downgraded 22 nonprofit hospitals and upgraded five.

Fitch said coronavirus-related financial pressure accounted for 13 of the downgrades as well as two rating outlook revisions to negative and 17 negative credit watches.

Other top hit sectors include local governments, higher education and nonprofit companies.

Becker's Hospital Review.

Alia Paavola – Tuesday, January 12th, 2021

S&P Outlook For U.S. Not-For-Profit Acute Health Care: Navigating The Bumps While Getting Back On Track

Sector View: Negative

We believe many providers may still experience pandemic-related volume and operating challenges that could yield cash flow and margin compression throughout 2021. These challenges are compounded by industry headwinds which had been growing for several years. These factors, on balance, could continue to stress credit quality as the industry continues to evolve, and strategic investments and capital remain necessary to maintain longer-term enterprise and competitive strength. Effective leadership and balance sheet strength could provide a foundation for a return to stability post-COVID-19.

Continue reading.

Municipal Bond Market Starts the Year Strongly.

The municipal bond market is starting 2021 on a strong note amid robust demand, light supply of new issues, and expectations of fiscal relief for state and local governments as well as potentially higher income taxes with full Democratic control in Washington.

A key indicator of tax-exempt bond demand, the yield ratio of 10-year triple-A munis relative to the 10-year Treasury note, stands at 66% and is at its lowest level in 20 years. The ratio began the year at around 75% after peaking at over 200% during the market turmoil last March. It has averaged close to 100% over the past 20 years.

The current ratio means that even investors in the top 37% federal tax bracket are getting little benefit to owning munis relative to Treasuries.

Continue reading.

Barron's

By Andrew Bary

Jan. 11, 2021 9:00 am ET

MacKay Municipal Managers Announces Top Five Municipal Market Insights For 2021.

PRINCETON, N.J., Jan. 12, 2021 /PRNewswire/ — MacKay Municipal Managers™, the municipal bond team of fixed income and equity investment management firm MacKay Shields LLC, today published its top five insights for the municipal bond market in 2021.

John Loffredo and Robert DiMella, co-heads of MacKay Shields Municipal Managers, commented on the firm's outlook: "2020 brought unprecedented market turbulence and uncertainty to the municipal market, and although we anticipate 2021 will continue to present notable challenges, the resilience historically driven by the essential nature of the municipal market offers some optimism for the year ahead. We believe that through disciplined credit analysis, a relative value focus and the ability to actively adjust as market conditions shift, investors can achieve success with municipal bonds in their portfolios."

MacKay Municipal Managers – Top Five Municipal Market Insights for 2021

Policy: The Biden Administration makes an impact. The Biden Administration's policies are expected to positively impact the municipal market in multiple ways. Anticipated initiatives include infrastructure spending, increasing employment opportunities and addressing climate change. These objectives likely coalesce in a higher volume of infrastructure-related municipal issuance that will become more recognized by impact-oriented investors for its strong ESG aspects. We expect a broad array of municipal projects will be climate friendly, supportive of increased employment development and will carry the dual oversight of both federal and state governments. In addition, investor anticipation of the Biden Administration pushing taxes higher (more likely a 2022 event) increases the value of tax exemption and municipal demand.

Stamina: key sectors withstand the COVID shutdown. We expect to see excess return opportunities in the COVID-impacted healthcare, transportation and travel-related municipal sectors. COVID-induced wider credit spreads on select issuers should continue into 2021, and the risk for investors to avoid are those securities with perceived credit weakness. However, a subset of those issuers have access to a broad array of policy and financial tools that should aid them in surviving the current crisis. We believe strategies employing an active, relative value approach focused on understanding credit fundamentals, liquidity and the political landscape can better identify those bonds that represent value. However, because politics play a role and outcomes are likely uneven, investing agility is also essential.

Resurrection: Puerto Rico rises while high risk deal bond prices decline. We believe that the long-awaited final chapters in the restructuring of Puerto Rico debt will provide investors an attractive relative value opportunity in the Territory's credits. Ultimately, a combined $11 billion of Puerto Rico related debt could restructure out of default in 2021 and resume paying interest. We anticipate demand for these bonds will be strong. The opportunity in Puerto Rico credits stands out relative to much riskier, primarily single site, project finance municipal credits that are prevalent in some high yield portfolios. We anticipate those highly leveraged and illiquid bond financings could face significant spread widening as project revenues fall short of original projections and investors, facing potential restructurings, attempt to sell their positions.

Oasis: taxable municipal bonds in a global fixed income world. We believe taxable bond investors, in recognition that corporate bond yields do not adequately compensate them for their relative risk, add to their taxable municipal holdings. When compared to corporate bonds, we believe taxable municipal bonds' stronger credit quality, higher yields, and risk benefits offer better value for investors with tax-free accounts. In 2020, corporate bonds yields fell to record lows while their interest rate risk, as measured by the duration of the ICE BofA US Corporate Index, had the largest single-year extension in over 30 years. In contrast, taxable municipal risk-adjusted yields are the cheapest they have been in more than a decade when compared to investment grade corporate bonds. 1 Tax-exempt investors will likely benefit as strong demand for taxable municipal bonds spurs issuance and reduces tax-exempt supply.

Essentiality: municipal bonds outlast the headlines. We believe that tax-exempt bonds from municipal issuers providing essential services will outperform other fixed income asset classes due to their favorable, intrinsic credit characteristics. While we understand municipal bond investor uncertainty is due to weak economic conditions, low yields and negative news coverage on the sector, investors should focus on what we believe is the inherent stability of municipal revenue streams sourced from municipal services that are essential to our everyday lives. They should find confidence in select local government bonds supported by property taxes that continue to be paid, income taxes collected and sales taxes withheld. Those revenue streams support many forms of state-level debt. Although we expect the economy to recover, thoughtful, research-driven credit selection is also essential to differentiate among issuers.

To view the full outlook, please click here.

Jan 12, 2021

About MacKay Shields LLC

MacKay Shields LLC (together with its subsidiaries, "MacKay") *, a New York Life Investments Company, is a global asset management firm with $144 billion in assets under management as of September 30, 2020. MacKay manages fixed income and equity strategies for high-net worth individuals and institutional clients, through separately managed accounts and collective investment vehicles including private funds, CLOs, UCITS, ETFs, closed end funds and mutual funds. MacKay maintains offices in New York City, Princeton, Los Angeles, London and Dublin. For more information visit www.mackayshields.com.

*MacKay Shields is a wholly owned subsidiary of New York Life Investment Management Holdings LLC, which is wholly owned by New York Life Insurance Company.

For additional information, please contact:

Allison Scott
New York Life Insurance Company
(212) 576-4517
allison_scott@nylim.com

1 As of 12/2020 – Comparing yield to worst divided by modified duration to worst for the ICE BofA Broad US Taxable Municipal Securities Index and the ICE BofA US Corporate Index over the last 10 years.

SOURCE MacKay Shields LLC

Related Links
https://www.mackayshields.com

Covid-19 Pandemic Drives Municipal Borrowing to 10-Year High.

Low interest rates, tight government budgets provide backdrop for muni bond boom

Municipal-bond issuance in 2020 was the highest in a decade, reflecting the collapse of interest rates and the increased costs cities and state governments are facing from Covid-19 shutdowns.

Bonds for new projects reached $252 billion last year, according to Refinitiv, a small increase from the previous year and the highest since 2010, when a federal incentive program helped push the total above $270 billion. The new borrowing drove the total amount of outstanding muni debt above $3.9 trillion for the first time since 2013, according to the Federal Reserve data from the third quarter.

The muni-issuance boom is unlikely to abate as cash-strapped local governments struggle to make up for ongoing Covid-19-related shortfalls and pay back old debts. Before the pandemic, many city and state governments had already been operating on tight budgets.

Continue reading.

The Wall Street Journal

By Heather Gillers

Jan. 12, 2021 5:30 am ET

Dems Likely Claw Back SALT In Stages: Bloomberg Radio

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence: Biden stimulus, SALT, and taxable munis. Hosted by Paul Sweeney and Vonnie Quinn.

Listen to audio.

Bloomberg Radio

January 15, 2021

‘Extraordinarily Expensive’: Muni-Bond Valuations at Record High

- **Ratio of munis to U.S. Treasuries at lowest level on record**
- **Tax-exempt debt sales may continue to fall: CreditSights**

The muni-bond market has never looked more expensive.

A key measure of relative value in the $3.9 trillion market for state and local government debt, the ratio of top-rated 10-year muni yields to U.S. Treasury securities, is holding at 67%. That’s the lowest level since at least 2001 and in stark contrast to March, when the ratio stood at 215%, according to the Bloomberg BVAL index.

U.S. Treasury yields have risen recently as the market anticipates the beginning of a recovery and additional government spending and potentially higher taxes after Democrats took control of the White House and Congress during the 2020 election cycle.

However, municipal bond yields have not followed that trend, an indication of strong demand as investors look to snap up tax-exempt issuance as a buffer for potential tax increases.

“Muni outperformance has left the market extraordinarily expensive,” analysts from Ramirez & Co. wrote in a note on Monday. “We expect this low value muni paradigm to persist until new issue supply increases meaningfully."

Tax-free debt has been in high demand partly due to low interest rates spurring state and local governments to sell taxable bonds for refinancings instead. That's because of 2017 law change preventing governments from issuing tax-exempt bonds to refinance some debt that can't be called.

Taxable issuance could drive new municipal debt sales to more than $500 billion in 2021, according to some analysts. But that's unlikely to sate the desire for tax-free debt, which could mean the high prices persist, said Patrick Luby, an analyst at CreditSights.

"It's reasonable to expect there could be some challenges finding suitable paper as we go further into the year, if you're looking for tax-exempt munis," said Luby. "The biggest deals on the calendar right now are taxable and we're seeing taxable deals in the pipeline that are going to refund tax-exempt bonds. That's going to further constrain the float in the market for tax-exempt munis."

Bloomberg Markets

By Fola Akinnibi

January 12, 2021, 10:45 AM PST

— With assistance by Amanda Albright

Congress Can Help State and Local Governments Prepare for a Rainy Day Without Repealing the SALT Cap.

With Joe Biden in the White House and narrow control of the Congress, Democrats are likely to try to restore the full state and local tax (SALT) deduction, capped through 2025 at $10,000 per year. But if lawmakers really want to assist state and local governments, rather than cutting federal income taxes for mostly high-income households, we suggest a SALT substitute.

Although we have disagreed on the value of the SALT deduction, we agree on an alternative. We'd use the roughly $80 billion annual cost of restoring the full deduction to instead create a special insurance fund that would help states and localities weather recessions without mass layoffs and cuts in essential services. Repealing the SALT deduction completely could obviously fund an even larger program.

Creating a fund along these lines, which we call the State Macroeconomic Insurance Fund (SMIF), would help individual states during economic downturns and lessen the severity and duration of recessions for the whole country.

How the SALT deduction works

The Tax Cuts and Jobs Act of 2017 (TCJA) limited to $10,000 the amount of state and local taxes that households can deduct each year from their federal income tax. By also doubling the standard deduction, the TCJA dramatically reduced the number of itemizers. These provisions, like almost all of those affecting the individual income tax, are scheduled to expire after 2025.

Today, only about 11 percent of households take the SALT deduction, and most of the benefit goes to high-income households. For top-bracket taxpayers, the deduction amounts to a 37 percent federal tax subsidy for up to $10,000 of state and local taxes paid. President-elect Biden has proposed to limit the value of itemized deductions to 28 percent, but 28 percent of an uncapped SALT deduction would be worth far more than the $10,000 capped deduction for most taxpayers.

Pros and cons of the SALT deduction

There's a huge partisan divide on the SALT deduction. Most Republicans claim that it's a "blue state subsidy," that largely benefits big spending, rich states with lots of high-income taxpayers. Democrats argue that the subsidy makes it easier for states and localities to raise taxes to pay for essential public services.

They're both a bit right. The evidence suggests deductibility does make high-income people more tolerant of high state taxes. But, it's unclear how much of those higher state and local taxes are used to pay for services that benefit vulnerable populations.

Bigger problems

State and local governments are subject to a well-known one-two punch in recessions: just as revenues are falling, demand goes up for the safety net programs they provide.

Yet, because most states and localities are required to balance their books over each budget cycle, they are forced to slash spending or raise taxes during economic downturns. For instance, state and local governments have cut 1.4 million positions since the onset of the COVID-19 pandemic. Spending cuts can harm not only vulnerable populations but also the larger economy.

Rainy day funds can help, but both amassing those funds and withdrawing them can be politically risky. Managing these types of funds is complicated and the economics of how much to save during a year and when to withdraw money are far from straightforward.

Congress sometimes fills part of this fiscal gap, but not always. For example, it provided about $240 billion in state and local fiscal relief in March, but declined to include further unrestricted aid in the 11th hour compromise bill that was passed last month.

A proposal

Our alternative would use the federal revenue that would otherwise go to reinstating the full SALT deduction to create a State Macroeconomic Insurance Fund (SMIF). Accrued over nine years (the average length of the last four economic expansions) and with interest earnings, such a fund could provide nearly $1 trillion to states and local governments during a downturn.

In addition, states could be encouraged to supplement the fund by making additional premium payments to the SMIF. This might let them save beyond current political limits and help standardize rainy day fund rules. States that declined to pay these additional premiums could still participate in the SMIF but would get the smaller baseline insurance payout.

To prevent states from gaming the program, both expected contributions and recession-generated payouts would be determined by a formula with factors outside of a governor's control, such as state unemployment rates.

To prevent federal policymakers from raiding the SMIF – as they have routinely done to the Social Security trust fund – it would be treated as a "non-budgetary account" or "deposit fund." Contributions would be considered to generate outlays at the time they are made rather than when state and local government payments are dispersed. Premiums would be considered receipts and would generate an offsetting outlay for the contribution to the fund, with no net budgetary effect. This is generally the way the federal government accounts for loan guarantee programs.

Winners and losers

The SMIF would help states maintain current services in a recession and boost the economy by funding new investments in infrastructure and other projects. Some states may perceive that a program along these lines would provide less benefit than an unrestricted SALT deduction. But if the last 10 months have taught us anything, it's the value of insurance.

taxpolicycenter.org

January 14, 2021

How To Navigate The Rocky Municipal Bond Market.

The coronavirus shock impacted all asset classes, including the generally calm world of municipal bonds.

Broad-based municipal bond exchange-traded funds such as the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF (TFI) experienced plunging bond prices while yields on the highest quality issues surged to more than three times U.S. Treasuries with similar maturities.

The onset of the pandemic did something else, too: It spurred more issuer borrowing.

State and local governments scrambled to raise more capital by issuing municipal bonds to the tune of a 31.3% year-over-year increase as of last year's third quarter, according to the Securities Industry and Financial Markets Association. Meanwhile, the pandemic added a litany of unexpected costs.

With just over $20 billion, the iShares National Muni Bond ETF (MUB) is the largest municipal bond ETF by assets. The Vanguard Tax-Exempt Bond ETF (VTEB) and SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF (SHM), with $10.6 billion and $4.4 billion respectively, are next in line.

MUB carries an SEC yield of just 0.86%, and roughly 41% of the portfolio is in California and New York muni bonds. The fund has gained 4.3% during the past year.

Bonds backed by airports, public transit systems, stadiums and universities have been among the hardest hit municipal bond categories. Also, jurisdictions that rely heavily on tourist spending have been slammed compared to areas relying on residential property taxes.

For yield seekers, the VanEck Vectors High Yield Muni ETF (HYD) offers a higher yield for financial advisors with clients who are willing to take higher credit risk. HYD carries an SEC yield of 3.09%, and 74.6% of the portfolio contains bonds that carry a non-investment grade rating or aren't rated at all. The portfolio's remaining portion holds investment grade debt with a BBB rating or better.

It's worth noting municipal bonds are not included in widely held broad-market bond funds like the iShares Core U.S. Aggregate Bond ETF (AGG) or Vanguard Total Bond Market ETF (BND). Investors seeking broader fixed-income diversification beyond corporate and U.S. government debt can add a broadly diversified muni bond ETF to complete their fixed-income exposure.

From an asset allocation perspective, municipal bonds are best held in taxable accounts like an individual or joint brokerage account that can reap the benefits of tax-free income.

For clients who are already in or approaching retirement, be sure they understand the tax ramifications of municipal bond income on their Social Security taxes. While muni bond income is free from federal tax and state taxes under certain conditions, it’s still counted as provisional income by the IRS.

Provisional income is the amount of income generated that the IRS keeps track of to determine how much a person’s Social Security gets taxed. Things that count as provisional income include any 1099 or interest from investments held in taxable accounts, one-half of Social Security income, rental income, pension income, employment income and required minimum distributions.

These numbers can add up pretty fast. And if they surpass $34,000 for single filers or $44,000 for married couples, up to 85% of Social Security income gets taxed.

The municipal bond market can be perilous, particularly for those who invest in it via single bond issuers in troubled jurisdictions or sectors. For example, states with mounting liabilities may be forced to choose between paying bondholders or pension retirees. This is all the more reason to encourage clients who want to invest in muni bonds to do so in a diversified and mindful way.

FINANCIAL ADVISOR

JANUARY 14, 2021 • RON DELEGGE

2021 Municipal Outlook: Reasons For Optimism

Summary

- Despite 2020’s many challenges, the Bloomberg Barclays Municipal Bond Index was up 5.2%, with returns that were even more compelling for the second half of the year, across the credit spectrum.
- During the year, we expect net supply to turn negative as more bonds mature or more bonds than were issued are called away.
- Contrary to dire headlines, muni bond issuers still have the wherewithal to handle the lingering fiscal challenges of COVID-19.
- In this environment, we expect municipal credit-particularly debt rated A and BBB-to outperform higher-rated bonds.

Continue reading.

Seeking Alpha

Jan. 13, 2021

U.S. Muni Market Ignores Stimulus-Provoked Rise In Treasury Yields.

CHICAGO, Jan 13 (Reuters) – Expectations that more fiscal stimulus is coming under a Democratic-controlled White House and U.S. Congress are further eroding the historically close correlation between U.S. Treasury yields and those on municipal bonds.

Longer-term yields in the $20 trillion market for U.S. government debt have soared to levels last seen in March, while yields have barely budged in the $3.9 trillion market where states, cities, schools and other issuers sell bonds.

Treasury yields jumped on prospects that new stimulus will boost growth in the coronavirus-battered economy and also increase Treasury supply after Georgia runoff elections for two U.S. Senate seats last week gave Democrats narrow control of Congress.

For munis, a supply and demand imbalance along with President-elect Joe Biden’s willingness to send billions of federal dollars to states and local governments dealing with pandemic-related revenue losses have kept yields in check.

Andrew Richman, senior fixed income strategist at Sterling Capital Management, said stimulus prospects have lifted prices and lowered yields for debt from financially troubled issuers like Illinois, while the muni market has grown more attractive for investors on the assumption that taxes will go up to pay for increased federal spending.

“That makes the desire for munis even greater,” he said. “Even though valuations are not great, it’s the one place to get tax-free income.”

Muni yields are typically lower than those of comparable Treasuries because interest income earned on munis is exempt from federal and sometimes state taxation.

Municipal Market Data’s (MMD) ratio of top-rated 10-year tax-exempt muni bond yields to comparable taxable Treasury yields this week neared an all-time low of 65.25% reached in 1984. It was last at 72.6%, indicating that munis are much more expensive relative to the federal government’s debt.

“That’s how out of whack we are right now relative value-wise,” said Greg Saulnier, MMD’s managing analyst.

The ratio went to the other extreme last March as the coronavirus pandemic began to upend economies, rising to as high as 369.54% when a selling frenzy hoisted muni yields dramatically until the U.S. Federal Reserve stepped in with emergency measures to backstop financial markets.

The 10-year yield on MMD’s benchmark triple-A scale, which began 2021 at 0.720%, ended Wednesday at 0.790%. By contrast, the 10-year Treasury yield jumped from 0.9170% on Jan. 4 to as high as 1.187% on Tuesday before retreating a bit on Wednesday.

Cooper Howard, director of fixed-income strategy at the Schwab Center for Financial Research, said a supply/demand imbalance has put a cap on muni yields.

“There’s been little amount of supply coming into the market lately and there’s continued inflows into bond mutual funds and (exchange-traded funds),” he said.

He added that muni yields could rise once supply increases.

After issuance hit a record $451.2 billion last year, supply has been slim so far in 2021 at the same time investors have money from January coupon and principal payments to plow back in to the market.

Saulnier said “everyone’s expecting free-flowing stimulus from the Democrats,” noting that states like New York and Illinois could get “a huge amount of help.”

Citing a $15 billion budget gap, New York Governor Andrew Cuomo on Monday said the federal government “must deliver fairness for New York and they must do it quickly because our budget is due April 1.”

In recent weeks, investors snapped up high-yielding Illinois general obligation bonds, narrowing the punishing spread for the state’s 10-year bonds over MMD’s scale from as wide as 314 basis points in November to 120 basis points on Wednesday.

With no new funding from Washington to address a budget gap, Illinois, the lowest-rated state at a notch above junk, was one of only two governmental entities to tap the U.S. Federal Reserve’s Municipal Liquidity Facility, borrowing a total of $3.2 billion.

Reporting by Karen Pierog in Chicago Editing by Alden Bentley and Matthew Lewis

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Bond Market Tax Haven Shrinks as Corporate-Style Munis Surge.

- **Taxable muni sales jump to highest in decade on refinancings**
- **CreditSights says tax-exempt debt sales may keep falling**

America’s municipal-bond market is becoming less of a tax haven.

Interest rates have sunk so low that states and local governments have been flooding the market with bonds that aren’t tax-exempt, allowing them to revive a refinancing tactic that was stripped of its subsidies by President Donald Trump’s 2017 tax-cut law or sidestep federal rules on how the proceeds can be spent.

The volume of taxable municipal-debt sales more than doubled last year to about $140 billion, the most since the Obama administration’s Build America Bond program picked up part of the interest bills on state and local securities to stoke the economy after the recession. At the same time, tax-exempt bond sales declined about 8% to $315 billion, according to data compiled by Bloomberg.

Wall Street analysts anticipate that the surge will continue, with CreditSights analyst Patrick Luby forecasting that the pace of tax-free bond sales will drop this year to a more than two-decade low.

The shift has been a boon to the tax-exempt market, where cash has continued to flood in, by reducing the supply. The increase in taxable debt sales has also provided an opportunity for investors hunting for safe, higher-yielding securities at a time when interest rates are negative or near zero in much of the world.

“It’s going to be stronger than it was than 2019,” said Adam Stern, co-head of research at Breckinridge, who added that it would also be bigger than 2020. “With the amount of sheer negative yielding debt around, if you’re a big institution, whether you’re a foreign buyer or a pension fund, it’s a nice fit.”

One of the major drivers of the increase in taxable sales was the 2017 law that prevents governments from selling tax-exempt bonds for so-called advance refundings, a tactic that allows governments to refinance debt that can't yet be bought back from investors.

The Democratic control of Congress and the White House once Joe Biden is sworn in could have an impact on the trend if the subsidy is revived, allowing governments to sell lower-cost tax-exempt bonds instead. "You would see tax exempt issuance go up, and you would see taxable issuance decrease significantly," said Timothy Heaney, senior managing director and senior portfolio manager at Newfleet Asset Management.

Yet other elements could be supportive of more taxable municipal-bond sales. It's possible a Biden administration could revive a version of the Build America Bond program to pump more money into infrastructure projects, something that Democrats have sought periodically since the program lapsed a decade ago, only to be stymied by Republican opposition.

"That is actually bullish for taxables, despite the high supply, because there is a lot of pent up demand," said Citigroup Inc. municipal-bond analyst Vikram Rai, speaking in a call with clients last week.

Bloomberg Markets

By Nic Querolo

January 11, 2021, 10:40 AM PST Updated on January 12, 2021, 8:21 AM PST

— With assistance by Danielle Moran

[Bond Market Outlook: Yields Likely to Stay Low in 2021]

It could be a challenging year ahead for bond investors.

MARKET PARTICIPANTS AND strategists say investors should expect a challenging yield environment this year as the Federal Reserve is expected to keep rates at historically low levels – likely keeping a lid on the yields of the safest fixed-income investment, U.S. Treasurys.

It's possible that income-seeking investors may need to accept a little more risk if they want more yield. That means considering dividend-paying stocks or going outside the U.S. to tap into the global bond market, which includes emerging markets.

Bryce Doty, senior portfolio manager at Sit Investment Associates, says news related to the pandemic will dominate investor sentiment and projections for economic growth in the first part of 2021. As society moves to a post-pandemic world, the outlook for bonds will evolve, market watchers say, with hopes that economies will improve as vaccines are distributed. An improving economy could lift bond yields, but it may also spur inflation – something else for investors to watch.

Continue reading.

US News & World Report

By Debbie Carlson, Contributor   Jan. 15, 2021, at 12:08 p.m.

[Guide To Tax-Exempt Bond Funds: 31 Best Buys]

You can get a first-class municipal bond fund at very low cost.

Here's what you get from a portfolio of tax-exempt bonds:

—Modest risk. The potential to lose money is not as great as with stocks, but it's palpable.

—Modest returns. Yields will be in the neighborhood of 1%. That's before losses to defaults and inflation.

—A very modest tax benefit. When coupons are tiny, the exemption doesn't matter much.

Continue reading.

Forbes

Jan 15, 2021

SEC Settles Charges Against Municipal Underwriter for Unfair Practices and Misleading Advertising in Connection With its Distribution of New Issue Securities: Ballard Spahr

Summary

The U.S. Securities and Exchange Commission (SEC) announced that it has settled charges against an underwriter, its owner, and chief compliance officer for violations of MSRB Rules G-21 on misleading advertising and G-17 on fair dealing.

The Upshot

According to the December 22, 2020, SEC Order implementing the settlement:

- During the period in question, the underwriter sold roughly 76 percent of the par value of its offerings to broker-dealers, rather than directly to investors, with 35 percent of the par value of those offerings sold to a single broker dealer—who then resold the bonds to investors at prices higher than the initial offering prices. According to the SEC, this practice conflicted with representations made by the underwriter to the issuers about its distribution capabilities.
- The SEC asserted that the underwriter's practice of using broker-dealers to resell underwritten bonds resulted in pricing that created profits for the broker-dealer intermediaries that would have been captured by the issuer had the bonds been sold directly to investors at those prices.
- MSRB rules, in and of themselves, do not prohibit an underwriter from selling new issue municipal securities to broker-dealers—but the SEC has articulated a position about these practices and the theoretical harm they could cause municipal issuers.

The Bottom Line

The SEC's use of fair dealing and advertising rules to promote regulatory goals that cannot be regulated directly should be noted by underwriters who sell new issue municipal securities to broker-dealers in order to manage their risk to capital, especially in volatile interest rate environments or where the demand for the issue is weak.

As a result of this Order, underwriters should review the materials they use to respond to issuer RFPs for underwriting services and their internet advertising content. Underwriters should also consider if and under what circumstances they should disclose to municipal issuers the SEC's views of the potential harm to issuers of the pricing dynamics described above.

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FULL ALERT

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The SEC found that, notwithstanding this "regular practice," the underwriter at the same time represented on its website and in RFP responses to issuers that the underwriter had "an extensive customer base which would allow it to locate suitable investors for the bonds and sell the bonds at competitive interest rates" among other similar representations.

According to the Order, because underwriters must make truthful and accurate representations about their capacity and resources to perform their underwriting services and not misrepresent or omit material facts, the SEC found that the underwriter's practice was a violation of MSRB's Rule G-17 on fair dealing. The SEC also alleged that the underwriter violated MSRB's Rule G-21 on advertising because its website is considered a professional advertisement, and the statements about its distribution capabilities were false and misleading.

The Order described the SEC's position concerning the effects that these practices may have on issuers and the pricing of new issue municipal securities. According to the SEC, the underwriter's practice of using broker-dealers to resell underwritten municipal securities creates the risk that an issuer's securities would not be sold at competitive interest rates, because the broker-dealer's commission is added to the initial offering prices, resulting in higher prices and lower yields. Under this reasoning, if the underwriter has sold the municipal securities directly to investors at those same prices and yields, the issuer could potentially receive more in proceeds or realize lower yields. MSRB rules, in and of themselves, do not prohibit an underwriter from selling new issue municipal securities to broker-dealers.

Although the SEC may not have a direct path to eliminating the intermediary profits of broker-dealers in this context absent an unrelated rule violation—in this case alleging misleading advertising under MSRB Rules G-21 and fair dealing violations under G-17—the SEC has articulated a new position about these practices and the theoretical harm they could cause municipal issuers.

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by the Municipal Securities Regulation and Enforcement Group

January 14, 2021

Los Angeles Has Been Hammered by Covid. But Its Muni Bonds Are Holding On. Here's Why.

Los Angeles is suffering what may be the hardest Covid-related health and economic hit of any big city. But the city's $2.6 billion in municipal bonds outstanding, while hardly thriving, appear in decent shape.

Unemployment in the Los Angeles region, at 9.6% in November, was the highest among the five biggest metropolitan areas and 3.2 percentage points worse than the national average. And that was before the surge of infections and deaths in Southern California accelerated into the new year, straining hospitals and morgues and dashing hopes for a rebound in the city's revenue.

Fitch Ratings analyst Alan Gibson last month revised the outlook to negative on Los Angeles' AA issuer default rating, citing "the extensive budget-balancing actions necessitated by the current economic downturn, which have the potential to reduce the city's financial resilience during the subsequent economic recovery period."

The pandemic threatens to reverse much of the progress the city made in the decade since the Great Recession, as it built its rainy-day reserves to almost $600 million in 2019. With the revenue shortfall for fiscal 2021 at $700 million, the city is about to pull a quarter of a billion dollars from reserves. Having already agreed to furloughs and early retirement for some city employees, Los Angeles is poised to start layoffs at its 10,000-member police department, a sign of fiscal distress to municipal bond professionals.

"When you see they're starting to cut into a significant number of employees, they're not just cutting fat in the budget," says Tom Kozlik, head of Municipal Strategy and Credit at Hilltop Securities. "They're cutting into the muscle."

Los Angeles' budget woes mirror those of cities, states, and authorities across the nation, as they struggle to fill a trillion-dollar revenue shortfall over three years caused by the pandemic. An unexpected dip in U.S. jobs in December dashed hopes that the U.S. economy will rebound quickly enough to ease the budget pain.

"The revenue decline that the City of Los Angeles has suffered as a result of Covid is multiples more than the decline during the Great Recession," says City Councilman Paul Krekorian, who chairs the council's budget committee. "We're now experiencing the biggest surge [in Covid] in the county. We have no reason to think our revenue is going to get better in the next months."

At the same time, Democratic victories in the Georgia runoffs for the Senate raised expectations that the new Biden administration will be able to enact direct federal aid to help states and cities like Los Angeles avoid layoffs that could cascade into the private sector and prolong the recession. Democrats last year proposed as much as $1 trillion in aid, an amount that was whittled down to nothing as Republicans argued the money would amount to a bailout for cities that had mismanaged pensions and finances.

Moody's Investors Service in the midst of the first Covid surge in April revised its outlook on the Los Angeles' Aa2 rating to stable from positive. The city's $2.6 billion in debt outstanding includes $585 million of general obligation bonds. It issued $1.8 billion of short term tax and revenue anticipation notes to bolster liquidity early in the fiscal year.

Moody's cited the city's large and diverse economy, strong management, and relatively modest debt burden. Los Angeles' $614 million of debt service is a fraction of the $5.8 billion New York City pays to investors, according to a separate Moody's report. Debt service plus retirement-benefit costs amount to only 22% of revenue, compared with Chicago's 46% burden, the heaviest in the nation. Moody's is still monitoring the situation, and the $250 million draw on reserves is in line with expectations, analyst Lori C. Trevino said on Jan. 13.

Investors have stood by the city's debt. Based on analysis by Ice Data Services, the price of a Municipal Corp. of Los Angeles lease revenue bond maturing in 2037 has risen to $122.427 on Jan.

14, from $120.51 at the beginning of 2020.

“I don’t really see L.A. bonds trading much cheaper than the general market,” says John Mousseau, head of fixed income at Cumberland Advisors. “This is why cities have reserves and why bonds have debt-service reserve funds—for those times. No doubt federal aid will help post-inauguration.”

Barron’s

By Stephen Kleege

Jan. 15, 2021 8:39 am ET

The Most Popular OZ Podcast Episodes of 2020.

The Opportunity Zones Podcast will return next week with new episodes for 2021. But in the meantime, here are the most popular episodes of the show in 2020 (presented in reverse chronological order).

Highlights include interviews with Opportunity Zone experts across several industries, including Ashley Tison, Tony Nitti, Dan Kowalski, Jim Sorenson, Erik Hayden, Travis Steffens, Emily Lavery, Garth Everhart, Clem Turner, Mike Novogradac, Riaz Taplin, and more.

CONTINUE READING »

opportunitydb.com

By Jimmy Atkinson

January 13, 2021

TAX - NEW JERSEY

Township of Freehold v. CentraState Healthcare Services, Inc.

Tax Court of New Jersey - January 5, 2021 - N.J.Tax - 2021 WL 47389

Township appealed county board of taxation’s dismissal of its petitions to impose omitted assessments and to revoke property tax exemptions given to taxpayer.

The Tax Court granted township’s motions for partial summary judgment on reconsideration. Taxpayer moved for reconsideration and sought dismissal of township’s omitted assessment complaints.

The Tax Court held that:

- Restoring tax-exempt property which ceases to be exempt to the tax rolls is governed by the exemption cessation statutory scheme;
- 20-day time limit for filing motion for reconsideration did not apply;
- Taxpayer did not state reason for reconsideration of the grant of partial summary judgment;
- The Tax Court would treat taxpayer’s motions as if they had been filed as motions seeking

dismissal of township's complaints; and
- Township could not resort to the general omitted assessment law to revoke assessor's grant of property tax exemption.

SEC OMS Publishes Staff Statement on LIBOR Transition in the Muni Securities Market: NABL

Today the SEC Office of Municipal Securities published a staff statement on LIBOR Transition in the Municipal Securities Market.

If you interested in reading it, please find the statement posted here.

Thank you.

————————————
Jessica Giroux
National Association of Bond Lawyers
Washington, DC
(202) 503-3300

IRS Extends Temporary Relief for Qualified Low-Income Housing Projects: NABL

Today, the Internal Revenue Service (IRS) issued Notice 2021-12 extending the temporary relief from certain requirements under § 42 for qualified low-income housing projects and under §§ 142(d) and 147(d) for qualified residential rental projects that was provided in Notice 2020-53, 2020-30 I.R.B. 151 in response to the continuing COVID-19 pandemic. The notice also provides relief for additional § 42 requirements not previously addressed in Notice 2020-53.

Of note:

- For purposes of section 5.02 of Rev. Proc. 2004-39, the last day of a 12-month transition period for a qualified residential rental project that ends on or after April 1, 2020, and before September 30, 2021, is postponed to September 30, 2021.
- If a bond is used to provide a qualified residential rental project and if the § 147(d) 2-year rehabilitation expenditure period for the bond ends on or after April 1, 2020, and before September 30, 2021, then the last day of that period is postponed to the earlier of one year from the original due date or September 30, 2021.

On December 2, 2020, NABL submitted a letter to the U.S. Department of the Treasury and IRS requesting an extension of IRS Notice 2020-53 through December 31, 2022. Notice 2020-53 provided 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 NABL's letter here.

Notice 2021-12 will be in IRB: 2021-6, dated February 8, 2021.

Ohio Tax Board Affirms Denial of Property Tax Exemption for Church's Parcel.

SUMMARY BY TAX ANALYSTS

In Greater Fellowship Assembly Outreach v. McClain, the Ohio Board of Tax Appeals found that a church failed to prove that a vacant lot qualified for a real property tax exemption, affirming the Ohio tax commissioner's denial of an exemption for the parcel.

Continue reading.

MSRB Announces Members of 2021 Board Advisory Groups.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its continuing advisory groups. In all, 31 market professionals will share their municipal market and regulatory perspectives while serving on the MSRB's Compliance and Municipal Fund Securities Advisory Groups.

"We are grateful that such a broad and diverse group of individuals volunteered their time and expertise to help inform the MSRB's initiatives," said Frank Fairman, Board member and chair of the 2021 Compliance Advisory Group.

Manju Ganeriwala, Board member and chair of the 2021 Municipal Fund Securities Advisory Group noted, "In forming the advisory groups, we take into consideration geographic diversity, gender and racial representation, and the incredible variety of firms and organizations that participate in the municipal securities market. We will continue striving to create advisory groups that are truly reflective of the market we serve."

Continue reading.

Date: January 15, 2021

Contact: Leah Szarek, Chief External Relations Officer
202-838-1500
lszarek@msrb.org

Webinar: Portfolio Managers' Perspectives on Identifying Value and Navigating Municipal Credit in 2021

Portfolio Managers' Perspectives on Identifying Value and Navigating Municipal Credit in 2021

Date: Friday, January 22, 2021

Time: 12:00 – 1:00 pm

Location: Zoom Webinar

Details:

The coronavirus pandemic is one of many major global events that have significantly impacted the financial markets since the first US municipal bond was issued over 200 years ago. Unlike many past bouts of market volatility, the price dislocations driven by technical imbalances that occurred last March across every financial market took place purely on the expectations of deterioration in fundamentals, as it took weeks or even months for the initial credit impact of the pandemic to be quantified through municipal and corporate financial statements.

The best investment that asset managers had made prior to the pandemic was in the form of people and technology, as arming their experienced investment teams with data-driven credit modeling analytics enabled judicious sell decisions during the initial wave of redemptions and wise purchases as the markets were flooded with liquidity. The crisis provided the ultimate proving ground for the application of new technologies in the investment processes, as being able to rapidly assess the financial impact of state/city lockdowns became imperative in making enlightened investment decisions for their clients.

The outlook for municipal credit has changed disproportionally as a direct result of the pandemic, with the heightened level of uncertainty creating an ideal opportunity for asset managers who have the expertise and analytics to effectively identify price inefficiencies versus credit risk. What were the lessons learned by municipal bond investors during 2020? What enhancements were made to the investment process that enabled investors to better navigate the crisis? What do portfolio managers view as the longer term impact of the pandemic on the public finance?

Our Speakers:

David Hammer, Executive Vice President, Pacific Investment Management Company
Mr. Hammer is an executive vice president in the Newport Beach office and head of municipal bond portfolio management, with oversight of the firm's municipal investment grade, high yield, taxable, and separately managed accounts. Prior to rejoining PIMCO in 2015, he was a managing director at Morgan Stanley, where he was head of municipal trading, risk management, and research.

Hector Negroni, Founder & Chief Executive Officer, Foundation Credit
Mr. Negroni is the Founder and CEO of Foundation Credit, CIO of the Foundation Credit Opportunities strategy and Chairman of the Foundation Infrastructure Opportunities strategy. Mr. Negroni has been a pioneer in the municipal market over the last three decades, leading innovation in investing and proprietary trading, public/private financing, derivatives, securitized products and a broad range of structured solutions. Prior to forming Foundation, he was the head of municipal trading at Goldman Sachs and before joining Goldman, he worked at Société Générale, Lazard Fréres and Citigroup in a variety of leadership roles.

Mark Paris, Chief Investment Officer, Invesco
Mr. Paris is CIO and Head of Municipal Strategies for Invesco Fixed Income. In this capacity, he is responsible for the oversight and implementation of all municipal bond strategies. Prior to joining the firm, Mr. Paris was a trader and then a portfolio manager on the municipal fixed income team at Morgan Stanley/Van Kampen, which he joined in 2002.

The discussion will be moderated by Chris Fenske, Head of Fixed Income Research for the Americas at IHS Markit.

NOTE: This webinar is closed to the press and will NOT be recorded.

Cost: Free for members of MAGNY and NFMA, $45 for non-NFMA members

Questions? Contact Email: programchair@magny.org

To register for the Portfolio Managers webinar on **January 22, 2021 at 12:00 PM ET**, click here.

SEC Settles Charges Against Municipal Underwriter for Unfair Practices and Misleading Advertising in Connection With its Distribution of New Issue Securities: Ballard Spahr

Summary

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The Upshot

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- The SEC asserted that the underwriter's practice of using broker-dealers to resell underwritten bonds resulted in pricing that created profits for the broker-dealer intermediaries that would have been captured by the issuer had the bonds been sold directly to investors at those prices.
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January 15, 2021

ERP Readiness and System Selection: GFOA Webinar

e-Learning Course

January 27, 2021 – February 2, 2021

Details:

This course will focus on preparing students to participate in an ERP implementation project. Participants will learn the different approaches ERP companies use to install systems. The ERP implementation process will be broken down and examined from pre-implementation to post-implementation. Special emphasis will be placed on project readiness and critical steps that all governments should be doing BEFORE contracting with a software vendor. Additionally, the class will highlight the expectations of the vendor and the customer during the implementation process. Participants will learn how to set up appropriate project governance, identify goals, define requirements, prepare an RFP, evaluate vendors, and ultimately begin momentum for a successful implementation.

Who Will Benefit: Any staff involved with planning, procuring, or implementing an ERP system in the near future

Learning Objectives:

- Those who successfully complete this seminar should be able to:
- Understand the requirements for effective management of each phase of an ERP implementation project
- Understand indicators for risk and need for project plan corrections in each project phase
- Identify critical success factors for ERP implementations
- Learn how to use ERP projects as an opportunity to improve process and implement best practices
- Take advantage of lessons learned with change management
- Identify how to transition out of the project and maintain a successful system

Member Price: $420.00
Non-member Price: $840.00

Click here to learn more and to register.

CDFA-Bricker PACE Webinar Series.

Property Assessed Clean Energy (PACE) is one of the most effective, affordable development finance tools for advancing clean energy goals. PACE offers significant opportunities for a wide range of energy efficiency improvements and energy generation projects by utilizing special assessment district financing techniques. The CDFA-Bricker PACE Webinar Series will highlight innovative approaches and best practices for using this tool, current challenges facing practitioners, and future prospects for PACE.

This series will include five, two-hour webinars. Experts from the PACE industry will present on key topics and discuss them with attendees through workshop-style engagement:

Retroactive PACE
Tuesday, January 26, 2021
2:00 PM – 4:00 PM

How PACE Gets Utilized Across All Market Segments
Tuesday, March 30, 2021
2:00 PM – 4:00 PM

Advancing Multi-Family Housing & Renewable Energy Goals with PACE
Tuesday, July 27, 2021
2:00 PM – 4:00 PM

Best Practices for Marketing & Selling PACE Across All Market Sectors
Tuesday, September 28 2021
2:00 PM – 4:00 PM

PACE 2.0 – The Next 10 Years
Tuesday, November 30, 2021
2:00 PM – 4:00 PM

The CDFA-Bricker PACE Webinar Series is a free, 5-part offering available from January to November. Those interested in attending the series can register for individual webinars or all five at once. Can't make the live webinar? No problem. Webinars will be recorded and made available online.

Thank you to Bricker & Eckler LLP for their generous support of this important webinar series!

Click here to learn more and to register.

MSRB Input on Strategic Goals and Priorities.

SUMMARY

SIFMA sent comments to the MSRB regarding their request for input on its strategic goals and priorities. SIFMA welcomes this opportunity for a constructive conversation on the direction of the MSRB, particularly at the start of Mark Kim's tenure as CEO and his outreach to various stakeholders. Below SIFMA provides high-level feedback on particular priorities identified by Mr.

Kim as they relate to the MSRB’s mission.

Read the letter.

ABA Offers Feedback on MSRB’s Strategic Goals.

In response to a request from the Municipal Securities Rulemaking Board seeking industry input on its strategic goals, the American Bankers Association yesterday submitted a letter providing several recommendations. Among other things, the association said that MSRB should consider the various budgetary hurdles for banks when adopting new technology, adding that “ABA believes the evolution of technology and its costs will continue to be challenging for banks as the pace, magnitude, and implementation of regulation will prove to be resource-intensive.”

Additionally, ABA recommend that MSRB prioritize transparency and flexibility in implementing regulations and supported a transition plan to return to a 15-member board. ABA also recommended MSRP work with industry when it beta-tests any potential new interface to the Electronic Municipal Market Access system that provides information about municipal bonds and bond prices.

ABA JOURNAL

JANUARY 12, 2021

Developer Says Work on Vegas-to-L.A. Line Could Start This Year.

Developers of the proposed $8-billion high-speed train between Southern California and Las Vegas—a project that has been on financial hold since last fall—have told Nevada regulators that construction, originally planned to start in 2020, could begin this year.

The president of Brightline West said in a Jan. 4 letter to the Nevada High-Speed Rail Authority that construction heading south from Las Vegas could begin in the second quarter of 2021. Last fall, Brightline’s parent company, Fortress Investment Group, put the brakes on the project when it was unable to complete financing.

“We are preparing a revised financing plan for 2021 that is expected to include additional equity and a relaunch of the bond sale,” wrote Brightline West President Sarah Watterson. The letter cited Brightline’s recent issuance of nearly $1 billion in tax-free bonds to fund an expansion of its existing Florida line as evidence of “improving market conditions and strong interest in private intercity passenger rail projects.”

The letter also announced that the company has contracted with Siemens Mobility to provide its Velaro trains for the SoCal-to-Vegas project. Brightline promises one day to link Las Vegas with Los Angeles, its biggest feeder market, with an initial 170-mile train line that would cut the six-hour driving time in half.

“We continue to make progress on Brightline West and remain focused on expanding our plans to connect further into L.A. County,” says Greta Seidman, Brightline West’s director of public affairs. “We appreciate the tremendous support from Nevada and California and are actively engaging officials in both states on our financing and construction plans."

In 2020, Brightline secured the rights to issue $800 million in private activity bonds allocated by California and Nevada. The company let those rights lapse last fall, citing financial market uncertainty caused by the pandemic. A bond industry newsletter said at the time that there were no markets for the securities, which were offered with yields running from 7% to 7.5%, about four times what top-rated municipal bonds pay.

The company says the project would create 40,000 construction jobs and 1,000 permanent jobs. It also says the all-electric train, with speeds of up to 200 mph, will keep 400,000 tons of carbon dioxide out of the air each year and remove three million cars from Interstate 15, which is often clogged with travelers on weekends.

Along with the rail project connecting Southern Nevada and Victorville, the company is also discussing additional links to California cities Rancho Cucamonga and Palmdale, where riders can then connect with the Metrolink railway to downtown Los Angeles.

The company's letter also mentioned it is recruiting for its executive and project management teams in Las Vegas and offered to provide an in-person briefing for the Nevada High-Speed Rail Authority in the near future.

Ninyo & Moore and Terra Contracting have been conducting geotechnical testing and exploratory boring for Brightline near the planned Las Vegas station south of the Strip.

Brightline West is the latest name for the project. It was introduced in 2019 as Virgin Trains USA and included participation by billionaire investor Richard Branson's Virgin Group Ltd.

It was renamed Xpress West after Branson left the project last year and is now being reintroduced as Brightline West, to better associate with the Florida Brightline train that, before being suspended during the pandemic, traveled from the Miami area to Orlando.

enr.com

by Doug Puppel

January 14, 2021

- How to Appeal Adverse Determinations from the IRS for Tax-Advantaged Bonds: New Guidance – Squire Patton Boggs
- IRS Issues Procedures for Appealing Adverse Bond Determinations.
- GFOA Analysis of Latest Coronavirus Relief Legislation.
- S&P ESG Pulse: Reimagining Accounting To Measure Climate Change Risks
- Can Parking Benefit Districts Step In as Revenue Sources Dry Up? – Nossaman
- Can 2020 Bond-Financed Projects Take Advantage of the fixed 4% Rate in the Pending COVID-19 Legislation? – Nixon Peabody
- First, Do No Harm: States Can Preserve Revenue by Decoupling From CARES Act Tax Breaks for Business Losses.
- 2021 Public Finance Outlooks: here; and here.
- 2021 State and Local Government Outlooks: here; and here.

- 2021 Education Outlooks: here; here; and here.
- Fitch 2021 Outlook – US Public Finance Utilities
- Breaking Down What to Expect from Municipal Bonds in 2021.
- And finally, I'm Worth What?!! is brought to us this week by *City of Seattle v. Rodriguez*, in which some punter was charged with violating the city's sexual exploitation ordinance by propositioning an undercover officer. The price agreed on? 80 bucks! Coase Theorem notwithstanding, it is our understanding that that price (so we're heard!) is well below market. Closer to home, we did learn that solicitation is not protected speech under the First Amendment and that this is "readily ascertainable to persons of ordinary intelligence." No matter that such persons remain in desperate short supply at the moment.

POLITICAL SUBDIVISIONS - KENTUCKY

Northern Kentucky Area Development District v. Wilson

Supreme Court of Kentucky - December 17, 2020 - S.W.3d - 2020 WL 7396295 - 2020 IER Cases 496,244

Employee brought action against her former employer, the Northern Kentucky Area Development District (NKADD), under the Kentucky Whistleblower Act (KWA), alleging that it retaliated against her by forcing her resignation for having reported a co-worker's fraudulent billing practice.

The Circuit Court granted former employer's motion for summary judgment, and employee appealed. The Court of Appeals reversed, and discretionary review was granted.

The Supreme Court held that as a matter of first impression, as to those claims filed before January 1, 2018, including employee's, NKADD was not one of the Commonwealth's "political subdivisions" subject to the KWA.

Northern Kentucky Area Development District (NKADD) was not then a Commonwealth "political subdivision" and so was not potentially liable on Kentucky Whistleblower Act (KWA) claim filed before January 1, 2018, by former employee for NKADD's alleged retaliation in purportedly forcing her to resign for having reported a co-worker's fraudulent billing practice; although statutorily NKADD was a "public agency" for purposes of the Interlocal Cooperation Act, that did not turn it into a political subdivision for KWA purposes, and, under the Comair analysis, 295 S.W.3d 91, while NKADD was created by statute by the General Assembly, an immune "parent," it did not serve an integral state function, as when its multitude of elder care, economic development, transportation planning, and other services was examined holistically, its operation concerned more regional than statewide needs, it carried out proprietary, non-governmental functions, and it was not necessary to government services.

MUNICIPAL CORPORATIONS - NORTH DAKOTA

DiCesare v. Charlotte-Mecklenburg Hospital Autuhority

Supreme Court of North Carolina - December 18, 2020 - S.E.2d - 2020 WL 7415943

Insureds filed putative class action against healthcare services provider, as quasi-municipal corporation organized under Hospital Authorities Act, seeking reimbursement for healthcare costs based upon claims for restraint of trade and monopolization pursuant to North Carolina General Statutes and Anti-Monopoly Clause in North Carolina's Constitution.

The Superior Court granted provider judgment on pleadings in part. Insureds noted appeal, and provider petitioned for writ of certiorari.

The Supreme Court held that:

- Provider was immune from suit under unfair trade practices and antitrust statutes, and
- Claim under Anti-Monopoly Clause was not sufficiently alleged.

Healthcare services provider, as quasi-municipal corporation organized under Hospital Authorities Act, not for-profit corporation, was not “person, firm, or corporation,” within meaning of unfair trade practice and antitrust statutes, and thus, provider was immune from liability for insureds’ class action statutory claims for restraint of trade and monopolization by allegedly encouraging insurers to steer insureds toward provider by offering insurers modest concessions on provider’s market-power driven, premium prices while forbidding insurers from allowing provider’s competitors to do same; provider was registered non-profit organization jointly operated by city and county and acting in its delegated legislative function of providing public rather than private healthcare facilities.

Insureds failed to sufficiently allege that healthcare services provider had monopoly in relevant market, as required to state class action claim against provider under Anti-Monopoly Clause of State Constitution; insureds did not adequately plead that provider controlled so large portion of market that it not only stifled competition and restricted freedom of commerce, but also controlled prices, as insureds alleged that provider only possessed approximately 50% share of acute inpatient hospital services in relevant market and that it faced sizeable competitors within that market, but did not allege that provider had ability to actually control prices in that market.

MUNICIPAL ORDINANCE - OHIO

City of Cincinnati v. Fourth National Realty, L.L.C.

Supreme Court of Ohio - December 22, 2020 - N.E.3d - 2020 WL 7501943 - 2020 -Ohio-6802

City brought action against the owner of a billboard sign, claiming that the sign was installed without obtaining the necessary permit and variance. Owner counterclaimed for a declaration that the city’s outdoor advertising prohibitions violated its free speech and due process rights.

City moved for summary judgment, arguing that the trial court lacked subject-matter jurisdiction because the owner had not served the attorney general with notice of its constitutional claims at the inception of owner’s case. While concluding that it had subject-matter jurisdiction, the Court of Common Pleas granted the motion. The parties appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. City sought discretionary review.

The Supreme Court held that:

- Service on attorney general for claims seeking declaration that a statute or ordinance was unconstitutional was not required at inception of a case, and
- Owner satisfied the service requirements for its constitutional claims.

Statute requiring service on the attorney general of a pleading seeking a declaratory judgment that a statute or municipal ordinance was unconstitutional did not deprive a trial court of subject-matter jurisdiction if such service did not occur at the inception of the action; the statute contained no language dictating the timing of service on the attorney general, and there was no language divesting the trial court of its subject-matter jurisdiction if parties did not complete service on the attorney general within a certain time.

Owner of a billboard sign satisfied the requirements of a statute requiring service on the attorney general of a pleading seeking a declaratory judgment that a statute or municipal ordinance was unconstitutional, in an action brought by a city, claiming that the sign was installed without obtaining the necessary permit and variance, in which the owner counterclaimed for a declaration that the city's outdoor advertising prohibitions violated its free speech and due process rights, where the owner asserted its challenge in a counterclaim and ultimately served the counterclaim on the attorney general, although such service did not occur until nearly two and a half years after the constitutional violations were first alleged.

OPEN RECORDS - PENNSYLVANIA

Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections

Supreme Court of Pennsylvania - December 22, 2020 - A.3d - 2020 WL 7502321

Newspaper petitioned to enforce a decision of Office of Open Records (OOR) that required Department of Corrections (DOC) to disclose records, pursuant to the Right to Know Law (RTKL) regarding illnesses of inmates and staff members at certain correctional facility.

The Commonwealth Court denied newspaper's motion for summary relief and then the Court, in single-judge opinions, concluded that DOC acted in bad faith, ordered disclosure of certain records, and ordered sanctions and awarded attorney fees to newspaper. DOC's petition for allowance of appeal was granted.

The Supreme Court held that:

- DOC's open records officer failed to act with diligence, which supported conclusion that DOC acted in bad faith, and
- RTKL permits recovery of attorney fees when the receiving agency determination is reversed and it deprived a requester of access to records in bad faith.

Department of Corrections' (DOC) open records officer failed to act with diligence in response to newspaper's request for records regarding illnesses of inmates and staff members at certain correctional facility, which supported conclusion that DOC acted in bad faith under Right to Know Law (RTKL); even though officer forwarded request to DOC's Health Care Bureau, officer did not seek an explanation or question Bureau's narrow interpretation that request exclusively sought records related to specific internal investigation, and officer did not take any steps to confirm whether only records that existed other than those generated in ongoing investigation were medical records.

The attorney fees provision of the Right to Know Law (RTKL) permits recovery of attorney fees when the receiving agency determination is reversed, and it deprived a requester of access to records in bad faith; recovery is not limited to when a court reverses the determination of the appeals officer or the agency deems the request denied.

MUNICIPAL ORDINANCE - WASHINGTON

City of Seattle v. Rodriguez

Court of Appeals of Washington, Division 1 - December 14, 2020 - P.3d - 2020 WL 7332611

Defendant was convicted in the Superior Court under city's sexual exploitation ordinance, stemming from incident in which he handed undercover police detective $80 in exchange for sexual conduct.

Defendant appealed, challenging ordinance as unconstitutionally vague and overbroad.

The Court of Appeals held that:

- Ordinance was not subject to strict-scrutiny analysis for constitutionality;
- Ordinance proscribed conduct which was not protected by First Amendment, and thus was not overbroad;
- Ordinance was not unconstitutionally vague based on its inclusion of term "agreement" and phrase "pursuant to an understanding"; and
- Ordinance was not unconstitutionally vague based on discretion it vested in police officers to enforce ordinance.

City's sexual exploitation ordinance, which proscribed agreements to compensate another person in exchange for engaging in sexual conduct, was not subject to strict-scrutiny analysis for constitutionality, where prostitution, which was clearly the conduct proscribed by the ordinance, was not a free speech activity protected by the First Amendment.

City's sexual exploitation ordinance, which proscribed agreements to compensate another person in exchange for engaging in sexual conduct and required no intent element, was not unconstitutionally overbroad in violation of the First Amendment, where the proscribed conduct, which was clearly the solicitation of prostitution, was not a free speech activity protected by the First Amendment.

City's sexual exploitation ordinance, which proscribed agreements to compensate another person pursuant to an understanding that the person would engage in sexual conduct, was not rendered unconstitutionally vague in violation of the Due Process Clause based on its inclusion of term "agreement" or phrase "pursuant to an understanding," the meaning of which was readily ascertainable to persons of ordinary intelligence.

City's sexual exploitation ordinance, which proscribed agreements to compensate another person in exchange for engaging in sexual conduct, was not rendered unconstitutionally vague in violation of the Due Process Clause based on the discretion vested in police officers to enforce the ordinance, since the ordinance did not invite an inordinate amount of police discretion outside of the normal level of police officer discretion typically associated with the enforcement of statutes.

OPEN MEETINGS - WASHINGTON

Tateuchi v. City of Bellevue

Court of Appeals of Washington, Division 1 - December 28, 2020 - P.3d - 2020 WL 7692154

Non-profit corporation and one of its members filed petition under the Land Use Petition Act (LUPA), seeking to revoke property owner's conditional use permit authorizing use of a rooftop in city as helistop, and filed claim against city council, alleging violation of the Open Public Meetings Act (OPMA) in connection with appeal of city's decision denying LUPA petition.

The Superior Court affirmed the city's decision, and dismissed the action. Plaintiffs sought direct review before the Supreme Court, which transferred review.

The Court of Appeals held that:

- Term "abandoned" in city zoning ordinance governing conditional use permits required overt act plus intent to abandon the conditional use of the property;
- Property owner's failure to use rooftop for helicopter takeoffs or landings during 12-month period did not amount to "abandonment" of conditional use permit;
- City council meeting on appeal of city's decision denying LUPA petition was exempt from the OPMA; and
- Defendants were entitled to award of attorney fees, as prevailing parties on appeal in land use decision.

GFOA Analysis of Latest Coronavirus Relief Legislation.

In the final days of 2020, Congress passed and the President signed into law the latest coronavirus relief package that was attached to the omnibus spending bill for the federal government. The relief package is the first action taken by Congress to enact additional coronavirus-related aid since April 2020.

Learn more.

S&P ESG Pulse: Reimagining Accounting To Measure Climate Change Risks

Key Takeaways

- ESG-related rating actions fell to about 100 per month in October and November, from a monthly average of 200 from July to September. This brings the total number of ESG-related rating actions during April-November to nearly 2,300.
- The bulk (over 98%) of ESG effects have related to health and safety (COVID-19). The most affected have been sovereign and local government ratings, air travel and mass transport, media and leisure, higher education, and retail, as well as restaurants, hotels, and conference centers, with knock-on effects on CMBS.
- As a percentage of total ESG and non-ESG rating actions over April-November, ESG-related actions accounted for as much as three-quarters of actions on sovereign/international public finance entities and one-third of U.S. public finance actions. For corporate and infrastructure entities, ESG factors contributed to one in three rating actions; bear in mind that we only treat COVID-19 as an ESG factor if it has direct health and safety effects on an entity's activities, not as a result of the economic crisis. In structured finance, ESG influenced about one in four rating actions.

Continue reading.

22 Dec, 2020

[Can Parking Benefit Districts Step In as Revenue Sources Dry Up? - Nossaman]

The COVID-19 pandemic, and resulting lockdowns and economic disruptions, have severely affected the usual revenue sources that local governments have used to fund public improvements and transportation services – e.g., distributions of state and federal gas tax revenue, local sales taxes, and property taxes. Local governments might consider creating parking benefit districts ("PBDs"), which can provide modest amounts of revenue. PBDs, along with other creative ways to raise revenue, can help fill in funding gaps for local improvements and services.

A PBD is a … Continue

Nossaman LLP

By Douglas Schwartz, Tina Kim on 01.07.2021

[Fitch: Federal Stimulus Won't Offset Higher Ed Budget Pressures.]

Fitch Ratings-New York/Chicago-07 January 2021: New federal aid for colleges and universities provided in the Consolidated Appropriations Act (CAA), the federal stimulus package and omnibus bill signed into law on Dec. 27, will provide some support for colleges and universities, but will not be sufficient to fill budget gaps caused by the pandemic, Fitch Ratings says. The law provides $22.7 billion in aid to colleges and universities, more than the $14.3 billion already provided under the Coronavirus Aid, Relief and Economic Security (CARES) Act, but is still far short of what industry leaders say is needed.

Federal funds will help provide crucial revenue, but these funds will only address a portion of short-term needs. Higher education institutions are facing challenges that will persist beyond this academic year, including declining incoming and international student enrollment, tuition affordability and discounting pressures, and flat or reduced state funding. Enrollment volatility and declines in key student-driven revenues are expected to worsen in 2021, following significant declines in new student enrollment in fall 2020 across the sector.

Continued expense reductions are expected to be necessary despite this additional federal support. Public universities may face further cuts in state funding, as state budgetary flexibility has been materially reduced since the start of the pandemic, and states did not receive direct aid in the recent stimulus package. Pandemic-related expenses and increased student financial aid needs will also continue to pressure budgets throughout the year and possibly into 2022, and may require further reductions to programs, staff, capital and other discretionary items. These reductions will reflect institutional strategies and priorities, and could have a long-term credit impact.

The new bill provides more flexibility for how funds in the Higher Education Emergency Relief Fund, including unspent CARES Act funds, can be used, such as offsetting lost revenue. Institutions must spend the same amount on emergency aid to students in need as they did with funds under the CARES Act, which, given the larger amount allocated directly to public and private higher education institutions under the CAA, gives them more funds for other purposes.

Unlike the CARES Act funding formula, the bulk of funds for higher education under the new aid package, $20.2 billion, will be distributed based on both full-time equivalent and headcount enrollment. This formula should help community colleges in particular, which serve a higher proportion of part-time students and received less aid under the CARES Act. Wealthier schools subject to the “endowment tax” will only receive 50% of funds determined under the formula, but these institutions typically have stronger financial profiles and less volatile revenue streams. Historically Black Colleges and Universities (HBCUs) and other minority-serving institutions will receive $1.7 billion, with Howard University receiving a separate allocation of $20 million. Federal loans to HBCUs totaling approximately $1.3 billion were forgiven. These funds could provide a material boost to HBCU budgets, considering their relatively smaller size and weaker financial profiles.

Other provisions included in the omnibus bill will help students apply for and receive financial aid, which is expected to support student access and retention. These reforms include a simplified Free Application for Federal Student Aid form, expanded Pell Grant eligibility for lower-income students and incarcerated students, and reinstated Pell Grant eligibility to students defrauded by educational institutions.

Additional policy has yet to be considered in the long-delayed reauthorization of the federal Higher Education Act, which expired in 2013. With Democratic control of both houses of Congress, visibility should improve on longer-term federal priorities and intended support, as key goals of Biden’s administration are considered, including federal stimulus for state and local governments, increased Pell Grant awards and student loan forgiveness.

Contacts:

Emily Wadhwani
Director, Head of Higher Education
+1 312 368-3347
Fitch Ratings
One North Wacker Dr.
Chicago, IL 60606

Sarah Repucci
Senior Director, Fitch Wire
+1 212 908-0726
Fitch Ratings
33 Whitehall St.
New York, NY 10004

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

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S&P Outlook For Charter Schools: State Revenue Weakness May Test Credit Quality

Sector View: Negative

While there are several factors that could influence credit quality over the next year, revenue pressures caused by cuts, delays, or deferrals to per-pupil funding have the most potential to bring on credit deterioration. We do not expect all credits will weaken in 2021 and beyond, but in the current environment we still expect downgrades to outpace upgrades. Any major policy changes negatively affecting school choice could also cause disruption. Schools with relatively stronger enrollment trends and greater financial reserves are likely to fare better, while lower rated schools in challenged states will have less operating flexibility.

Continue reading.

7 Jan, 2021

Fitch Ratings 2021 Outlook Compendium: U.S. Public Finance

View the Fitch Outlook.

Wed 06 Jan, 2021

The Public Finance Outlook for 2021 in 10 Themes.

Vaccines, a new presidency, a reshuffled Congress and a pandemic-shifted economy will transfigure the state and local fiscal landscape.

In my last column closing out 2020, I identified public finance lessons from a year that "challenged and stressed our systems of public finance in ways not experienced since the Great Depression." Now, as a new year begins to unfold amid the pandemic's continuing grip, it's time to look forward to what lies ahead for leaders in state and local finance. I don't claim a crystal ball here, just a crow's-nest view of coming issues, concerns and likely trends. Here are 10 of them:

Pandemic intergovernmental aid will be on the table again, but don't expect an avalanche of cash. It's a good bet that the House and the White House will take a shot at some more COVID-19 stimulus funding for states and localities. Whether Republican resistance in the Senate can be overcome is the big unknown. If moderates in both parties can cobble together a modest compromise package, chances can improve. Look for centrist proposals for aid to offset demonstrable revenue shortfalls, reopen schools, fill public safety vacancies and fund public health expenditures over the next six months.

Even with mass vaccinations, the fiscal drag will be real in 2021. State and local revenues should recover by August, but public payrolls will keep lagging this year. While the U.S. economy should expand by this summer, public-sector layoffs and hiring freezes will remain the soft spot in national GDP. Exhaustion of rainy-day funds will be a problem for many public budgets, making the coming months the worst for some. Nonetheless, in some states the frothy stock market's capital-gains tax revenues are offsetting losses from pandemic unemployment and business closures. Households will help by spending stimulus cash.

[Continue reading.]

GOVERNING.COM

GIRARD MILLER, FINANCE COLUMNIST | JANUARY 5, 2021

S&P Outlook For U.S. Local Governments: Revenue Pressures Mount And Choices Get Harder

Sector View: Negative

Our view of the sector remains negative given the level of pressures brought by COVID-19 and the recession. While we expect most credits will experience only slight, if any, deterioration in 2021 and beyond, in the current environment we still expect downgrades to outpace upgrades. Credits that maintain higher reserves are better positioned to withstand revenue and expenditure pressure, but for most, active management of any shortfalls will still be critical to maintaining credit quality. Local governments that have weaker financial reserves and less flexibility, and don't proactively manage their budgets in 2021, will be most at risk for credit deterioration.

[Continue reading.]

6 Jan, 2021

S&P Outlook For U.S. States: Symptoms Persist, But A Shot In The Arm Could Lead To Growth

Sector View: Negative

Negative now, but potentially back on track at some point in 2021. Although signs of a recovery have begun to take hold with the approval of vaccines and the stabilizing of certain revenues, many headwinds will continue to bear down on state credit stability in 2021. The severity of the sudden-stop recession and the reintroduction of social distancing measures in the winter will have a lasting effect on local economies and thus budget stability. S&P Global Economics expects national real GDP to have contracted 3.9% in 2020 and to grow 4.2% in 2021. Should vaccinations progress smoothly and economic growth match expectations, credit pressures could wane by mid-year.

[Continue reading.]

5 Jan, 2021

S&P 'AAA' Rated U.S. Counties: Current List

[View the list.]

6 Jan, 2021

S&P 'AAA' Rated U.S. Municipalities: Current List

View the list.

6 Jan, 2021

S&P 'AAA' Rated U.S. School Districts: Current List

View the list.

6 Jan, 2021

First, Do No Harm: States Can Preserve Revenue by Decoupling From CARES Act Tax Breaks for Business Losses.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted in March 2020, included several costly federal tax breaks for businesses that will also reduce many states' personal and corporate income tax revenues because their tax codes are tied to the federal code. Several of these tax breaks allow businesses to get refunds of taxes they owed for the 2018 and 2019 tax years, before the pandemic hit. Five states — Colorado, Georgia, Hawaii, New York, and North Carolina — have already "decoupled" their tax laws from these provisions to avoid having to give back revenue they have already collected; other states should do the same.[1]

Some of these tax breaks have questionable merit at the federal level and make even less sense for states, which must balance their budgets each year — an extremely challenging task given their sharp revenue declines since the pandemic hit. States will need to increase tax revenues during the next several years to minimize cuts in education, health care, child care, infrastructure, and other critical services, which would disproportionately harm low-income people and people of color. Their immediate priority must be to preserve existing revenue sources by avoiding unnecessary and unwarranted tax cuts.

About half the states have probably lost some revenue already because their tax codes are linked to current provisions of the Internal Revenue Code (IRC). These "rolling conformity" states need to decouple from the CARES Act provisions as early as possible in their 2021 legislative sessions to prevent additional revenue losses and minimize the number of taxpayers that will have to file amended tax returns and pay taxes that were previously refunded.

Continue reading.

CENTER ON BUDGET AND POLICY PRIORITIES

BY MICHAEL MAZEROV

JANUARY 4, 2021

[How Can Congress Best Help State and Local Governments?]

Wednesday, Jan 13, 2021 | 2:00 PM – 3:00 PM EST

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The Brookings Institution

TAX - NEW YORK

Town of Irondequoit v. County of Monroe

Court of Appeals of New York - December 22, 2020 - N.E.3d - 2020 WL 7497940 - 2020 N.Y. Slip Op. 07689

Towns brought hybrid Article 78 proceeding and declaratory judgment action against county and several of its officials, alleging that county was required to credit towns for amount of unpaid maintenance charges, or to guarantee those amounts, that towns assessed against individual properties, for performing services such as cutting grass or removing weeds following property owners' failure to maintain their property themselves.

The Supreme Court, Monroe County, granted towns' petition and denied county and officials' motion to dismiss. County and officials appealed. The Supreme Court, Appellate Division, reversed. Towns appealed.

The Court of Appeals held that counties were required to guarantee and credit towns in connection with certain "unpaid delinquent taxes" assessed by towns.

A Democrat-Run Congress Would Bolster Odds of State, City Aid.

- **Biden has called last stimulus measure 'just a down payment'**
- **Republican Senate was roadblock to helping local governments**

Democrat Raphael Warnock claimed one of the two Senate seats in Georgia's runoff election and Jon Ossoff held a lead over his Republican opponent Wednesday morning, raising the chance that Vice President-elect Kamala Harris will wield the tie-breaking power over an evenly divided Senate.

That would allow President-elect Joe Biden to push for another stimulus bill that would extend aid to states, cities and local transit agencies whose revenue was diminished after shutdowns to contain the virus sent the economy into the worst recession since World War II. Republicans have opposed such aid, characterizing it as a bailout for Democratic strongholds even though the impacts are being felt broadly across the country.

"That would really be, in my mind, considered an upside scenario for municipal credit," said Tom Kozlik, head of municipal strategy and credit at Hilltop Securities, who said state and local governments may still struggle to return to pre-covid levels of stability even with aid. “But it is going to be a lot closer than what it would have been.”

Direct aid for state and cities was largely absent in the most recent stimulus legislation. Democrats included about $1 trillion in the bill that passed the House last year, only to stall in the Republican-led Senate.

It remains to be seen what a Biden relief bill would look like, though he’s made it clear that he plans to push for one. Even without a large amount of direct aid, previous stimulus bills are helping states and cities by keeping the economy afloat and preventing tax collections from being reduced as much as once anticipated.

“I have long said that the bipartisan Covid-19 relief bill passed in December was just a down payment,” Biden said in a statement Wednesday. “We need urgent action on what comes next, because the Covid-19 crisis hits red states and blue states alike.”

The outlook for U.S. states and cities has improved dramatically since the onset of the pandemic, largely due to the help provided by the first stimulus package enacted in March. That means that the Biden administration could enact much less aid than was previously approved by the House.

Dan White, director of public sector research for Moody’s Analytics, said aid of about $80 billion to $100 billion could cover the firm’s forecast for the shortfall facing states and local governments through mid-2022. He said the firm’s estimate for those deficits has declined thanks to previous federal support, including $82 billion for schools and universities in the package that lawmakers passed in December.

In the municipal-bond market, where states and cities raise money, yields may climb higher in tandem with U.S. Treasuries as investors factor in the possibility of another economic stimulus package. Ten-year benchmark municipal yields inched up two basis points on Wednesday.

But investors are likely to welcome the impact of another aid package that would ease the risk of credit-rating downgrades to governments.

New York’s Metropolitan Transportation Authority has been among those hardest hit as ridership on the city’s buses, subways and commuter trains tumbled after the pandemic struck. While the agency received $4 billion of aid in legislation approved last month, it faces an estimated $8 billion deficit through 2024 and is counting on potential help should New York Senator Chuck Schumer become Senate Majority Leader.

New York City Mayor Bill de Blasio said Schumer’s ascension as Senate leader would open “a whole new world of possibilities for this city and for this nation.”

“Make cities, counties and states whole for what they’ve been through,” de Blasio said. “Those are particularly urgent matters.”

A Democratic Congress and White House would provide a “positive tailwind” to municipal bonds because of the prospect of additional aid, said Eric Glass, a portfolio manager for fixed income impact strategies at AllianceBernstein.

“From my perspective, this is nothing but a positive for munis,” he said.

Bloomberg Markets

By Nic Querolo and Amanda Albright

January 6, 2021, 10:23 AM PST

— With assistance by Danielle Moran, Michelle Kaske, and Henry Goldman

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Fitch 2021 Outlook - US Public Finance Colleges and Universities

January 21, 2021 | 11:00AM EST

ABOUT THE WEBINAR

Please join us on January 21 at 11:00am ET for a discussion of our 2021 US Public Finance Colleges and Universities outlook.

What to watch:

– Enrollment uncertainty, particularly in entering and international student populations.
– Significant revenue tightening from student fees and state appropriation cuts.
– Widening competitive landscape with renewed focus on access and affordability.
– Macroeconomic slowdown may further disrupt the competitive landscape.

Click here to learn more and to register.

Fitch 2021 Outlook - US Public Finance Utilities

January 27, 2021 | 2:00PM EST

Please join us on January 27 at 2:00pm ET for a discussion of our 2021 US Public Finance Utilities outlook.

What to watch – Public Power:

– Affordability trends should survive economic shocks.
– Electric demand expected to stabilize.
– Local government challenges could pressure power systems.
– Low natural gas and energy prices broadly positive.
– Historically low interest rates positive.
– Magnitude of environmental pressure hinges on senate race.

What to watch – Water and Sewer:

– Financial performance amid rising delinquencies and lower usage stemming from the coronavirus pandemic.
– Capital spending impacts on leverage.
– Trends in service affordability.
– The effects of regulatory changes on capital programs and operations.
– Possible ramifications from local government pressures.

Click here to learn more and to register.

MSRB Contribution Disclosure Requirements for Dealers and MAs.

Did you know that the MSRB requires dealers and MAs to disclose information in connection with contributions they make to officials of political parties, and bond ballot referendum committees?

Learn more about these disclosures.

Democrats Get Clout Needed for Risky Bid to End Trump's SALT Cap.

- **A popular blue state tax break could be revived under Biden**
- **Some economists dismiss the idea as a handout to the richest**

Democrats will soon have the balance of power required to repeal President Donald Trump's limitation on a prized tax deduction, but doing so will likely require a tricky procedural process and a politically fraught vote.

There are few issues that have riled certain segments of the Democratic Party more than Trump's cap on write-offs of state and local tax, or SALT. Repealing it, however, would require Democrats to vote for something widely seen as a tax cut for the rich at the same time the party is proposing tax increases to make the Internal Revenue Service code more progressive.

Democrats have been trying to restore unlimited SALT deductions since the 2017 tax law capped the benefit at $10,000. Lawmakers from high-tax states, including New York, California and New Jersey, where the tax break is particularly valuable, decried the move saying it was punishing their voters to pay for Trump's $1.5 trillion tax cut for corporations and the wealthy.

Senator Chuck Schumer of New York, who will become the chamber's majority leader thanks to the victories of Raphael Warnock and Jon Ossoff in this week's Senate runoff elections in Georgia, said last year that abolishing the SALT deduction cap would be among his top priorities.

"When we get in the majority we'll do it permanently," Schumer said at a press conference on Long Island in July. His office didn't immediately respond to a request to comment.

Senator Ron Wyden, an Oregon Democrat poised to control the Finance Committee, said in a statement that he would be looking to lift the SALT cap as part of a broader tax agenda.

The politics are easy for lawmakers from high-tax states where many residents saw their deductions decline following the 2017 tax overhaul, but it's a harder sell for Democrats in low-tax states where few constituents owe more than $10,000 in state income and property taxes.

It's even trickier because allowing taxpayers to write off their full SALT bills largely benefits the wealthiest Americans. About 52% of the benefit from repealing the cap flows to households earning at least $1 million a year, according to the the non-partisan Joint Committee on Taxation.

Because of that, it's earned a reputation among Washington economists and policy wonks across the political spectrum for being a dumb idea. Jason Furman, a former economic adviser to President

Barack Obama has called restoring the full tax break a “waste of money.”

“At best, the SALT deduction is a warped way to do social policy; at worst it is a politically motivated handout to the richest people in the richest places,” two Brookings Institution researchers wrote in a report last year. “Either way, it is bad policy — especially at a time of rising inequality.”

Still, Democrats are jazzed over the chance to restore a tax break that they say was included in the 2017 law by Republicans to hurt taxpayers in Democratic-leaning districts, including middle-income earners in areas where housing is expensive and taxes are high. Liberals see the cap as part of a broader strategy by conservatives to undermine support for progressive agendas.

“With Democrats in complete control of the federal government, and New York’s senior senator in charge of the Senate agenda, our chances for giving tax relief to middle class New Jerseyans have never been better,” Representative Bill Pascrell said in a statement. “I’m already working with my colleagues in the delegation who are chomping at the bit to restore the SALT deductions Republicans stole from our neighbors in their 2017 tax scam.”

Representative Tom Suozzi, a New York Democrat, is among the legislators leading the charge to repeal the cap. He said he wants it repealed in its entirety.

“The SALT deduction is based upon basic fairness,” Suozzi said. “You shouldn’t be taxed on taxes you have already paid.”

“The second part of the fairness issue is that state and local governments have been operating under this paradigm for a hundred years,” he added.

Shepherding the vote through the House and Senate will require the slim Democratic majorities in both chambers to stay united on what is likely to be a complex and sweeping economic policy bill.

The SALT repeal would likely be bundled with dozens of other tax and spending provisions in what’s known as a budget reconciliation bill, a fast-tracked process to pass legislation with a simple Senate majority — rather than the normal 60-vote threshold.

That way, the chamber’s 50 Democrats, combined with a tie-breaking vote from soon-to-be Vice President Kamala Harris, could pass the legislation without needing any Republicans to sign on.

Democrats have a long trail of defeats trying to get rid of the SALT cap. New York Governor Andrew Cuomo went to court to invalidate the law. Governors of Democratic-led states, including Cuomo, then tried to use the judicial system to throw out regulations regarding the cap. So far, both efforts have failed.

House Democrats successfully passed a short-term repeal of the SALT cap in 2019, but the Senate didn’t consider it.

It’s an expensive proposition to fully repeal the SALT cap. Restoring the tax break would cost about $620 billion over a decade, according to an estimate from the Urban-Brookings Tax Policy Center. That’s about twice the cost the $1,200 stimulus payments Congress approved in March for most Americans. However, the Tax Policy Center projects that most benefits would fall to top earners, leaving middle-income households with an average tax cut of $10.

Democrats could opt to do something short of a full restoration of the SALT tax break that would blunt the disproportionate share going to the richest earners, said Seth Hanlon, a senior fellow at the Center for American Progress.

“For example, the cap could be raised but not eliminated, or Congress could extend cap relief only to households under a certain income level,” he said. “These options would cost a fraction of the revenue of total SALT cap elimination, and would be targeted at middle-class families.”

A more generous SALT break could also be coupled with tax increases on top earners that would cut into some of the savings they would receive.

A reversal of the SALT cap could also have an unintended consequence for state and local government coffers, another concern for Democrats. When the cap went into effect, it spurred a record municipal bond buying spree with investors turning to the tax-free securities as a tool to shrink their tax bills. Unwinding the cap risks doing the opposite — imposing a slight dampening effect on markets with high taxes like New York and California.

Reversal would be a slight positive at the local level, and negative for states, both of which are struggling with economic fallout from the coronavirus pandemic, said Barclays Plc strategist Mikhail Foux.

Bloomberg Politics

By Laura Davison and Kaustuv Basu

January 7, 2021, 11:00 PM PST Updated on January 8, 2021, 8:49 AM PST

— With assistance by Nic Querolo

SEC Adopts New Framework for Fund Valuation.

Read the Article.

Vedder Price PC | USA | 4 Jan 2021

Illinois and MTA Bonds Rally on Bet That Democrats Win Senate.

- **States and borrowers may get more federal help with Democrats**
- **New York MTA is already set to receive $4 billion of fed funds**

Municipal-bonds investors are buying up debt from New York’s Metropolitan Transportation Authority and Illinois, but they have Georgia on their minds.

Some bonds sold by the MTA, the largest U.S. mass-transit system, and Illinois are trading up in price Wednesday as Democrats’ chances of taking back the U.S. Senate increased after Tuesday’s runoff elections in Georgia. Illinois and the MTA are two well-known, financially-stressed governments that would benefit if Democrats control both chambers of Congress as they are more likely to aid states and municipalities, said Matt Dalton, chief executive officer of Belle Haven Investments, which oversees $14 billion of municipal debt.

“MTA is probably the most visible entity out there right now that’s in need of cash,” Dalton said. “A lot of the focus within our industry is ‘OK, MTA is probably going to benefit on the back of the Blue

Wave.' So that's going to be the real power behind seeing MTA spreads tighten."

Illinois, the lowest-rated state, and the MTA are the only two borrowers that tapped the Federal Reserve's emergency lending program, which ended on Dec. 31, as low interest rates in the $3.9 trillion municipal-bond market kept the Fed program attractive only to the most fiscally-challenged.

MTA debt maturing in 2031 traded Wednesday at an average price of 121.1 cents on the dollar, up from an average 112 cents during the prior three months, according to data compiled by Bloomberg.

An Illinois bond maturing in 2030 traded at an average price of 128.3 cents on the dollar, up from 124.8 cents at the end of 2020, Bloomberg data show.

The MTA's near-term finances got a boost last month as Congress approved $4 billion of additional federal aid to help close the agency's 2021 budget deficit as ridership has plummeted. That infusion of cash allows the MTA to avoid drastic service cuts and laying off thousands of employees.

Even with the federal help, the MTA faces an $8 billion budget deficit through 2024. The MTA was seeking $12 billion of federal aid as ridership may not return to pre-pandemic levels until 2024.

While federal stimulus won't help Illinois' long underfunded pension systems, it could help with other losses connected to the pandemic that are contributing to back-to-back budget gaps.

Illinois is facing a $3.9 billion deficit in fiscal 2021 and has only $1.85 million in its rainy day fund. It borrowed $1.2 billion in June from the Federal Reserve Municipal Liquidity Facility to close a gap in fiscal 2020 and then another $2 billion in December for fiscal 2021.

"Illinois has more to gain from potential stimulus out of Congress and more ground to make up," said Daniel Solender, director of the municipal bond group for Lord, Abbett & Co., which owns Illinois debt as part of $31 billion in muni assets under management. "The reason it has more to gain is the state and local funding is potentially a direct source of funding for them."

Bloomberg Markets

By Michelle Kaske and Shruti Singh

January 6, 2021, 9:33 AM PST

[Fitch: New York Transit System Risk Remains Despite Government Stimulus]

Fitch Ratings-New York-05 January 2021: The $908 billion coronavirus stimulus package includes funding that will tide the New York Metropolitan Transportation Authority (MTA) over in 2021, but financial challenges will remain in future years, absent a strong recovery in ridership, according to Fitch Ratings. The infusion of funding should be sufficient to balance the MTA's 2021 budget, temporarily staving off substantial service reductions and layoffs, but without ridership improvement or additional aid some cuts will still likely be needed by next year, as the MTA reports a nearly $8 billion budget gap for 2022-2024.

The bill, signed into law on Dec. 27, includes $14 billion for transit systems with more than $4 billion going to the MTA, according to Senator Charles Schumer of New York. The MTA received a similar amount of funding in the Coronavirus Aid, Relief and Economic Security (CARES) Act, passed in

March. Without the new aid, the MTA was projecting the need for 40% service reductions in subway and bus systems and 50% in commuter rail lines, resulting in an estimated 9,400 layoffs.

Fitch believes the service and workforce reductions proposed by the MTA would be difficult to implement, given the need for essential workers and others to travel by mass transit. Other gap closing actions, such as increased deficit borrowing, deferring capital spending or use of any remaining reserves could further weaken the authority's credit profile. Fitch downgraded MTA's Long-Term IDR (A-/Negative) multiple times in 2020. To close its 2020 budget gap the MTA tapped more than $500 million in reserves and $424 million in capital lockbox funds, and exhausted its borrowing capacity under the Municipal Liquidity Facility with the issuance of $2.9 billion in deficit financing notes in December.

The additional federal aid does not address the MTA's fundamental ridership problem. Subway ridership was down a drastic 64% as of Dec. 30, 2020 from last year and bus ridership was down 44%. Ridership growth has flattened after an initial boost coincided with the partial reopening of the economy during the early summer, as restrictions on public gatherings and significant work-fro--home levels continue. The MTA is forecasting a return to a 'new normal' ridership level — the equivalent of 90% of the pre-pandemic trend — by 2024 in the best-case scenario. Fitch expects ridership to remain highly sensitive to the effective distribution of coronavirus vaccines and widespread inoculation, and the permanency of the transition to remote work and migration to lower-density suburbs.

The MTA fared better in relative terms under the new bill than in the CARES Act. The agency will receive about 30% of transit aid in this bill, compared with only 16% in the earlier one. Transit ridership among the MTA's constituent agencies, responsible for subways, buses and commuter rail, represented 37% of all transit passenger trips in 2018 in the U.S., according to the American Public Transportation Association's 2020 Public Transportation Fact Book.

Contact:

Michael Rinaldi
Senior Director, US Public Finance
+1 212 908-0833
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Amy Laskey
Managing Director, US Public Finance
+1 212 908-0568

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

Tax Credits in the Housing Authority World: Opportunities and Challenges

The low-income housing tax credit (LIHTC) has been critical to public housing authorities (PHAs) to address preservation, development and redevelopment goals.

To achieve these goals, LIHTCs complement other programs created by Congress and administered by the U.S. Department of Housing and Urban Development (HUD), including Moving to Work (MTW), the Choice Neighborhoods Initiative (CNI) and the Rental Assistance Demonstration (RAD). PHAs use these programs and LIHTCs to address a variety of objectives:

- preservation of existing public housing through recapitalization,
- demolition and redevelopment where needs extend beyond rehabilitation,
- neighborhood revitalization if needs extend beyond a public housing site,
- demolition and production of replacement housing at alternative locations, and
- production of special needs housing.

Continue reading.

Novogradac

Published by Arlene Conn on Thursday, January 7, 2021

Breaking Down What to Expect from Municipal Bonds in 2021.

UBS Global Wealth Management's Head Americas Fixed Income Thomas McLoughlin joined Yahoo Finance Live to discuss what the outlook for municipal bonds is for 2021.

Video Transcript

THOMAS MCLOUGHLIN: As we head toward the closing bell, one place that investors look for yield, as well as protection sometimes, is fixed income. Let's bring in Tom McLoughlin, UBS Global Wealth Management's Head of America's Fixed Income, because in your most recent note on municipal bonds, you wrote about something that just struck me as well.

I thought that would go counter to the whole point of purchasing munis, which is that a third of them issued in 2020 actually are subject to federal tax. And I was always raised that you go to munis to get the double bang of the return, but also the non-tax prospect. So what's going on here?

THOMAS MCLOUGHLIN: Yeah, you know, it's interesting, Adam. This is probably the most pronounced new trend that we've seen in municipals since at least 2010. The Tax Cut and Jobs Act provided a change to the tax regime, which prevented state and local governments from doing what we call advanced refunding.

So if a state or local government wants to refinance their debt, similar to how a homeowner might refinance their mortgage, they used to be able to do it well in advance of the optional redemption date. And they can no longer do so by law since the end of 2017. So many are actually issuing bonds to refinance their prior taxed bonds with taxable securities. And we do expect the trend to continue.

– And we saw that there was no new aid for local and state governments as part of that new stimulus legislation that President Trump signed a week ago. How long is it going to take for municipal balance sheets to recover?

THOMAS MCLOUGHLIN: I expect it will probably take the better part of a year to another year and a half. And part of that reason is because municipal credit conditions tend to lag the real economy. A lot of that has to do with the fact that property taxes, for example, any reduction in the assessed valuation of property within a specific city or town will take the better part of a year and a half in order to basically flow through the tax rolls.

And similarly, any reduction in income tax is not likely to be felt for about a year after a recession hits. So what we expect is that municipal ratings will probably will have more downgrades in 2021 than we will see in upgrades.

And that may even persist into 2022. The good news is that the depth of the recession was more severe than it was 10 years ago. But it was shorter. And we're actually expecting to see municipals not feel quite as much pain and suffering as they did in the period of 2009, '10, and '11.

ADAM SHAPIRO: But as you point out, there are going to be a group that capture the attention of the broader market because of the downgrades. And any name recognition that, as investors, we should be aware of? I would just assume New York City. Although New York City is a good bet in the long run, it's taken a big hit.

THOMAS MCLOUGHLIN: Yeah, for sure. I mean, I should emphasize that very point, which is that New York City over a long period of time is a good bet. It's not going anywhere. It is a foundational very important part of the US economy.

At the same time, New York City has basically seen an exodus of population and of income. And a lot of that is a national trend, as people from the Northeast and the Midwest begin to migrate South and West. But the pandemic accelerated this. So New York is likely to basically be faced with two or three years of particularly difficult budgets that they have to construct.

In terms of broader sectors, it's not going to surprise our viewers to learn that things like continuing care retirement communities, privatized student housing, or local housing deals are also going to basically be subject to greater difficulties, for example, than utilities, electric utilities and water utilities, which are relatively more insulated.

– You were talking about taxes earlier. So how much of the uncertainty we're seeing in the markets right now, the sell-off, has to do with the uncertainty around which party is going to actually control the Senate and basically dictate tax policy?

THOMAS MCLOUGHLIN: Yeah, it's fair to say that the volatility we're seeing the market has, to some degree, is based on the uncertainty related to the election. But I would suggest that we basically break it up and look at it two ways, the short term volatility associated with the election uncertainty and a lot of the stuff that's going on with the president's call to the Georgia Secretary of State and things like that.

The bigger, longer term, you're going to take more of a performance we think is going to be the pattern of the pandemic and the vaccinations. And as we've seen in the last 24 hours with the heavy lockdowns first in Scotland, then in England, we're in a position where we've seen the highest infection rate on a daily basis come out in the last couple of days. That is actually the bigger long term story.

And the good news there is that as the vaccine, basically, the rollout proceeds, and we actually have a greater vaccination rate across society, then the US economy will be poised for a much stronger 2021.

ADAM SHAPIRO: You have a happy New Year. Tom McLoughlin is UBS's Global Wealth Management Head of America's Fixed Income. Good to see you. Thank you for joining us.

YAHOO FINANCE

January 4, 2021

U.S. Municipal Bond Sales Hit Record $451.2 billion in 2020.

CHICAGO, Jan 4 (Reuters) – U.S. states, cities, schools and other issuers sold $451.2 billion of municipal bonds last year, the highest amount on records that date back to 1980, according to Refinitiv data on Monday.

With the U.S. Federal Reserve pushing interest rates to historical lows to combat the economic fallout from the ongoing coronavirus pandemic, muni bond sales were up 11% compared to 2019.

Issuers took advantage of the low rates to refund nearly $200 billion of outstanding debt, the most since 2017. Taxable bonds accounted for 31% of issuance.

California was the top issuer with $7.47 billion of bonds, followed by New York City with $6.6 billion, and New York's Metropolitan Transportation Authority with $6.18 billion.

BofA Securities was the top muni bond bookrunner, followed by Citi and JP Morgan Securities, according to Refinitiv.

(Reporting By Karen Pierog; Editing by Alden Bentley and Alistair Bell)

State and Local Sales Tax Rates, 2021.

Key Findings

- Forty-five states and the District of Columbia collect statewide sales taxes.
- Local sales taxes are collected in 38 states. In some cases, they can rival or even exceed state rates.
- The five states with the highest average combined state and local sales tax rates are Tennessee (9.55 percent), Louisiana (9.52 percent), Arkansas (9.51 percent), Washington (9.23 percent), and Alabama (9.22 percent).
- No state rates have changed since Utah increased the state-collected share of its sales tax from 5.95 percent to 6.1 percent in April 2019.
- Sales tax rates differ by state, but sales tax bases also impact how much revenue is collected from a tax and how the tax affects the economy.
- Sales tax rate differentials can induce consumers to shop across borders or buy products online.

Continue reading.

Tax Foundation

by Janelle Cammenga

January 6, 2021

Municipal Bond Market Starts the Year Strongly.

The municipal bond market is starting 2021 on a strong note amid robust demand, light supply of new issues, and expectations of fiscal relief for state and local governments as well as potentially higher income taxes with full Democratic control in Washington.

A key indicator of tax-exempt bond demand, the yield ratio of 10-year triple-A munis relative to the 10-year Treasury note, stands at 66% and is at its lowest level in 20 years. The ratio began the year at around 75% after peaking at over 200% during the market turmoil last March. It has averaged close to 100% over the past 20 years.

The current ratio means that even investors in the top 37% federal tax bracket are getting little benefit to owning munis relative to Treasuries.

Muni yields have barely budged this year as Treasury yields have risen. The 10-year AAA muni now yields about 0.75%, against 1.11% for the 10-year Treasury, according to Bloomberg data.

New-issue volume so far in 2021 has been about $3 billion, about half the pace of the weekly pace of 2020.

One portfolio manager tells Barron's that demand is strong as bondholders reinvest Jan. 1 interest payments and as investors anticipate relief from Washington for strapped municipal-bond issuers and the possibility of higher federal income taxes, which would increase the appeal of munis relative to Treasuries and other taxable debt.

"The Biden administration's policies are expected to positively impact the municipal market in multiple ways," wrote municipal-bond managers at MacKay Shields in their 2021 outlook. "Anticipated initiatives include infrastructure spending, increasing employment opportunities and addressing climate change."

"In addition, investor anticipation of the Biden administration pushing taxes higher (more likely a 2022 event) increases the value of tax exemption and municipal demand," the managers added.

Barron's took a cautious view of the municipal market in our 2021 income outlook, arguing that yields were historically low on an absolute basis and relative to Treasuries. Many municipal bonds yield less than inflation running at 1.5% to 2% and with Treasury investors banking on 2% annual inflation in the coming decade.

The MacKay Shields managers are more upbeat:

"We believe that tax-exempt bonds from municipal issuers providing essential services will outperform other fixed-income asset classes due to their favorable, intrinsic credit characteristics. While we understand municipal bond investor uncertainty is due to weak economic conditions, low yields and negative news coverage on the sector, investors should focus on what we believe is the inherent stability of municipal revenue streams sourced from municipal services that are essential to our everyday lives."

Bonds issued by risky issuers like the Metropolitan Transportation Authority, which operates New York's subway system, have rallied lately as investors bet on more federal aid. The MTA's 5.25% bonds due in 2055 now yield 2.45%, down from 5% in the spring.

The MacKay Shields managers see opportunity in the potential restructuring of about $11 billion of Puerto Rican debt in 2021 following the successful restructuring of Puerto Rican sales tax revenue bonds known as Cofina.

"We believe that the long-awaited final chapters in the restructuring of Puerto Rico debt will provide investors an attractive relative value opportunity in the territory's credits," the MacKay managers wrote.

Barron's

By Andrew Bary

Jan. 11, 2021 9:00 am ET

S&P Pension Spotlight: Ohio

Key Takeaways

- Ohio's statewide pension plans are moderately funded and are generally affordable for most governments in the state.
- The plans' statutory contribution framework may mitigate any immediate pension cost pressures associated with market volatility, though the dollar amount of contributions will likely have to increase just to maintain current funding levels.
- The plans' funding framework will result in little progress in improving the net pension liability as none of the plans' contributions meet our minimum funding calculation.
- Other postemployment benefit (OPEB) costs and liabilities are manageable across most plans given recent changes from "self-insured coverage" to "stipends" that have controlled costs across the non-education plans.

Continue reading.

7 Jan, 2021

CDFA // BNY Mellon Development Finance Webcast Series.

January 19, February 16, March 16, April 20, May 18, June 15, July 20, August 17 | 2:00 PM Eastern

Overview

CDFA is excited to partner again with The Bank of New York Mellon on the CDFA // BNY Mellon

Development Finance Webcast series! This year, CDFA will host 12, 1-hour long webinars covering a wide range of development finance topics such as forecasting the bond market and financing rural broadband. As always, these webinars are free and will be viewable after the recording.

Click here to learn more and to register.

Michigan Public-Private Partnership Authorization Nears Passage.

A bill package headed to the Michigan governor's desk would authorize certain municipalities to enter into public-private partnerships to get needed bridge work done.

Options to cover road and bridge repairs in Michigan are a constant pursuit at the statehouse. Since taking office, Gov. Gretchen Whitmer has advocated for a 45-cent fuel tax increase.

In the past year, the governor signed into law a bill to have the Michigan Department of Transportation hire an independent consulting firm to study the feasibility of collecting tolls on interstates. The agency is interested in the viability of tolls on Interstates 75, 94 and 96.

Local public-private partnerships

The bill package headed to Whitmer addresses infrastructure needs.

SB1215-1218 would update the state's Home Rule Act to allow cities with moveable bridges, or bascule bridges, to enter into public-private partnerships to cover repairs and construction.

Sen. Ken Horn, R-Frankenmuth, said the legislation is intended to benefit the entire Great Lakes Bay Region. There is no specific municipality identified, but he said it would benefit municipalities like Bay City.

The locale near the base of the Saginaw Bay on Lake Huron has two bridges described by legislators as "in dire need of repair."

Horn and Sens. Jeremy Moss, D-Southfield, and Wayne Schmidt, R-Traverse City, say costs to make repairs far outweigh what is feasible from the local level.

"Unfortunately, especially after revenues have been even further affected by COVID-19, the city's repair needs are beyond available funding at all levels of government," Horn said in prepared remarks.

According to a legislative analysis, Bay City has partnered with United Bridge Partners to work on the city's two bascule bridges. The Legislature must act before the work can get underway.

SB1215 also would specify that tolls could not be collected on drivers until a bridge is either renovated or constructed. Additionally, toll agreements could be for up to 75 years.

Other bills in the package cover limits on affected projects, how counties approve projects, and public-private partnership tax collection.

In addition to Bay City, bascule bridges in the region are located in Alpena, Manistee, Menominee, Port Huron, and South Haven.

Tolling study

The 2020 law giving the state DOT authority to move forward with a tolling study requires consideration to be given to the economic impact, providing discounts to in-state drivers, toll amounts, and how to pay for the toll. The impact of tolls on out-of-state operators expected to use Michigan interstates also will be considered.

A written report on the firm's findings will be provided to state officials. At that time, the governor will be authorized to move forward with a strategic plan to implement tolls.

If the state were to decide to move forward with toll implementation, a federal waiver would be required to collect tolls on highways built with federal funds.

Land Line Media

by Keith Goble

JANUARY 4, 2021

New Jersey to Sell $350 Million in Self-Designated Social Bonds.

- **Proceeds from sale will finance school construction projects**
- **Document says state won't provide social bond use updates**

New Jersey says it's getting into the social-bond market.

The Garden State's Economic Development Authority Thursday is selling $350 million of what officials have self-designated as social bonds through a negotiated offering managed by Loop Capital Markets. It's the first social bond for the state, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Danielle Moran

January 7, 2021, 6:54 AM PST

NFMA 2021 Officers and Board Announced.

The NFMA is pleased to announce that Anne Ross, Principal Consultant, Muni Credit & Compliance Advisors, LLC, has been elected NFMA Chair for 2021. She succeeds Nicole Byrd, Senior Investment Professional at Nationwide Mutual Insurance, who served as 2020 NFMA Chair. Rachel Barkley, Senior Vice President at Loop Capital Markets, has been elected Vice Chair, and will also chair the Industry Practices Committee. Mark Capell, Managing Vice President and senior underwriter at BAM, will continue his role of Secretary and Education Chair. Elected Treasurer for 2021 – 2022 was Ron Mintz, Principal and Senior Municipal Investment Analyst in Vanguard's Investment Management Group. Together with Neene Jenkins Executive Director at JPM Chase Asset

Management, Mr. Mintz will chair the NFMA's 2021 Annual Conference.

The 2021 Annual Conference will employ a virtual platform for 2021 and will be held on May 12 & 13. To view the full list of 2021 NFMA Board members, go to About Us/Governance.

Information on the 2021 Annual Conference will be released in coming weeks.

IRS Issues Procedures for Appealing Adverse Bond Determinations.

SUMMARY BY TAX ANALYSTS

The IRS has issued procedures (Rev. Proc. 2021-10) for an issuer of tax-advantaged bonds to request an administrative appeal to the Independent Office of Appeals of a proposed adverse determination made by the Office of Tax Exempt Bonds (TEB Examination Office) regarding issues within the scope of the guidance.

The IRS is required to allow bond issuers to contest a proposed adverse determination to a senior officer in Appeals before the agency proceeds to tax bondholders. Rev. Proc. 2006-40 sets forth procedures for an issuer of bonds to appeal a proposed adverse determination regarding the qualification of an issue of bonds as tax-exempt bonds or a claim for recovery of asserted overpayments of arbitrage rebate under section 148. However, the procedures in Rev. Proc. 2006-40 do not apply to an appeal of a proposed adverse determination regarding the qualification of other types of tax-advantaged bonds, such as tax credit bonds. Rev. Proc. 2021-10 describes the circumstances and procedures under which an issuer may request that specified adverse determinations by the TEB Examination Office be reviewed by Appeals.

An issuer of bonds is eligible to request an appeal under Rev. Proc. 2021-10 after receiving from the TEB Examination Office (1) a proposed adverse determination that the issuer fails to qualify for the exclusion of the interest on the bonds from the gross income of the bondholders under section 103; (2) a proposed adverse determination that the issuer fails to qualify for the tax credits for the bondholders or direct payments to the issuer regarding the bonds under provisions of the tax code applicable to tax-advantaged bonds; or (3) a proposed adverse determination that denies a claim for recovery of an asserted overpayment of arbitrage rebate under section 148 regarding tax-exempt bonds or under section 148 as modified by relevant provisions of the tax code regarding other tax-advantaged bonds.

A bond issuer's appeal request must be submitted in writing to the TEB Examination Office within 30 days of the date of the proposed adverse bond determination or arbitrage rebate claim denial and must include the information specified in Rev. Proc. 2021-10. The TEB Examination Office may extend the 30-day period if the issuer submits a written request justifying the extension before the 30-day period expires. Upon receipt of an appeal request, the TEB Examination Office will review the request to determine whether it meets the requirements of the revenue procedure. If it does not, the issuer will have 30 days from the date of the notification to correct the deficiencies. If the request meets the requirements and contains no new information or analysis of the taxpayer's position, the TEB Examination Office will transfer the case file to Appeals.

If an issuer does not submit a written appeal request in the manner and within the time periods described in the revenue procedure, the proposed adverse bond determination or arbitrage rebate claim denial will become final. If a proposed adverse bond determination becomes final, then, depending on the type of bond that was issued (1) the interest on those bonds will no longer be treated as excludable from gross income under section 103; (2) holders will not be allowed any credit against income tax for interest on those bonds; or (3) issuers will not be allowed a direct payment. The IRS may also initiate procedures to impose tax on interest on the bonds, disallow the tax credits, or if it has not already done so, disallow direct payments regarding the interest on the bonds. Moreover, a notice of deficiency may be issued to recover overpayments of direct payments.

FULL TEXT PUBLISHED BY TAX ANALYSTS

Modifies Rev. Proc. 2006-4

SECTION 1. PURPOSE

This revenue procedure provides procedures for an issuer of tax-advantaged bonds (as defined in § 1.150-1(b) of the Income Tax Regulations (Regulations)) to request an administrative appeal to the Independent Office of Appeals (Appeals) within the Internal Revenue Service (IRS) of a proposed adverse determination made by the office that is responsible for examinations of tax-advantaged bonds, presently the Office of Tax Exempt Bonds (and including any successor IRS office performing such examinations, the TEB Examination Office), with respect to issues within the scope of this revenue procedure.

SECTION 2. BACKGROUND

.01 Appeals jurisdiction. Section 3105 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, 112 Stat. 685 (1998 IRS Restructuring Act), directed the IRS to modify its administrative procedures to allow issuers an expeditious appeal of a proposed adverse determination by the IRS with respect to a bond issue to a senior officer in Appeals before the IRS proceeds to tax bondholders.

.02 Bond appeals guidance. Rev. Proc. 2006-40, 2006-2 C.B. 691, sets forth procedures for an issuer of bonds to appeal a proposed adverse determination regarding the qualification of an issue of bonds as tax-exempt bonds (as defined in § 150(a)(6) of the Internal Revenue Code (Code)) or a claim for recovery of asserted overpayments of arbitrage rebate under § 148. However, the procedures in Rev. Proc. 2006-40 do not apply to an appeal of a proposed adverse determination regarding the qualification of other types of tax-advantaged bonds, such as tax-credit bonds.

.03 Other applicable appeals procedures. Procedures under § 601.106 et seq. of the Statement of Procedural Rules, including those governing submissions and taxpayer conferences, apply to appeals regarding bond issues, bondholders, and arbitrage rebate. A bondholder's appeal rights under § 601.106 of the Statement of Procedural Rules are independent and separate from an issuer's appeal rights under this revenue procedure. Section 1.148-3(i)(3)(iii) of the Regulations also applies to appeals concerning an Arbitrage Rebate Claim Denial (as defined in section 4.02 of this revenue procedure).

.04 Issuers as taxpayers. To conduct an examination (including any related administrative appeal) of a tax-advantaged bond expeditiously, the IRS generally treats an issuer as the taxpayer for the bond issue under examination.

.05 Conduit borrowers as taxpayers. In appropriate circumstances, Appeals may consider, concurrently with an issuer's appeal, issues relating to those raised in a Proposed Adverse Bond Determination (as defined in section 4.02 of this revenue procedure) that affect the tax liability (other than any potential penalties) of the borrower of bond proceeds of a conduit financing issue.

Appeals will consider an issue relating to the borrower's tax liability only if the borrower is under examination with respect to the issue, the resolution of that issue is affected by the Proposed Adverse Bond Determination (for example, issues under § 150(b) or 168(g)), and the borrower agrees to resolve the issue concurrently with the issuer's appeal under this revenue procedure. See § 601.106 of the Statement of Procedural Rules for procedures applicable to the borrower.

.06 Technical advice. An issuer may submit a request to the TEB Examination Office or Appeals for referral of a tax matter to the IRS Office of Chief Counsel for technical advice while a tax-advantaged bond issue is under the jurisdiction of the TEB Examination Office or Appeals, respectively. See Rev. Proc. 2021-2, 2021-01 I.R.B. 116, or annual successor revenue procedure.

.07 Alternative dispute resolution programs. Alternative dispute resolution methods permit Appeals officers to mediate, facilitate, or propose settlements in the resolution of matters identified during the course of an examination prior to the issuance of a Proposed Adverse Bond Determination or an Arbitrage Rebate Claim Denial. Alternative dispute resolution methods within Appeals applicable to bonds currently include TE/GE Fast Track Settlement (FTS) (Announcement 2012-34, 2012-36 I.R.B 334), Post Appeals Mediation (Rev. Proc. 2014-63, 2014-53 I.R.B. 1014), and Early Referral (Rev. Proc. 99-28, 1999-2 C.B. 109).

SECTION 3. SCOPE

This revenue procedure applies to Proposed Adverse Bond Determinations and Arbitrage Rebate Claim Denials as defined in section 4.02 of this revenue procedure.

SECTION 4. INITIATING THE APPEAL PROCESS

.01 In general. Section 4.02 through 4.06 of this revenue procedure set forth the circumstances and procedures under which an issuer may request that certain adverse determinations by the TEB Examination Office be reviewed by Appeals.

.02 Availability of appeal request to issuer. An issuer is eligible to request an appeal under this revenue procedure upon the receipt from the TEB Examination Office of a: (1) proposed adverse determination that an issue of bonds fails to qualify for the exclusion of the interest on the bonds from the gross income of the bondholders under § 103 (a Proposed Adverse Bond Determination); (2) proposed adverse determination that an issue of bonds fails to qualify for the tax credits for the bondholders or direct payments to the issuer with respect to the bonds under provisions of the Code applicable to tax-advantaged bonds, such as former §§ 54, 54A, 54AA, 1397E, and 6431 (also a Proposed Adverse Bond Determination); or (3) proposed adverse determination that denies a claim for recovery of an asserted overpayment of arbitrage rebate under § 148 with respect to tax-exempt bonds or under § 148 as modified by relevant provisions of the Code with respect to other tax-advantaged bonds (an Arbitrage Rebate Claim Denial). Except as provided in alternate dispute resolution programs, including any applicable programs referenced in section 2.07 of this revenue procedure or in any subsequently issued published guidance, appeal rights are not available to an issuer prior to the receipt of a Proposed Adverse Bond Determination or an Arbitrage Rebate Claim Denial.

.03 Requesting an appeal. An issuer's appeal request must be submitted in writing to the TEB Examination Office within 30 days of the date of the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial. The appeal request must include the information listed in section 4.04 of this revenue procedure. The TEB Examination Office may extend this 30-day submission period based on an issuer's written request to the TEB Examination Office within the 30-day submission period that justifies such extension.

.04 Required information and signature. An appeal request made under this revenue procedure must include the information listed in this section 4.04.

(1) A detailed written response to the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial, including a detailed explanation of the issuer's position regarding each issue in dispute.

(2) A declaration in the following form: "Under penalties of perjury, I declare that I have examined this request for an appeal, including accompanying documents, and that, to the best of my knowledge and belief, the facts presented are true, correct, and complete."

(3) The issuer or the issuer's authorized representative must sign an appeal request. An issuer may designate an authorized representative by submitting a duly executed Form 2848, Power of Attorney and Declaration of Representative, when making an appeal request under this revenue procedure.

.05 Response to an appeal request. Upon receipt of an appeal request, the TEB Examination Office will review the request to determine whether it meets the requirements of this revenue procedure. If the request does not meet such requirements, the TEB Examination Office will notify the issuer in writing of the request's deficiencies and the issuer will have 30 days from the date of the notification to correct the deficiencies. If the request meets the requirements of this revenue procedure and contains no new information or analysis of the taxpayer's position, the TEB Examination Office will transfer the case file to Appeals. If the request meets the requirements of this revenue procedure and contains new information or analysis of the taxpayer's position, the TEB Examination Office will notify the issuer that such new information or analysis may change the case's outcome and requires the TEB Examination Office's further consideration prior to transfer of the case file to Appeals.

.06 Failure to make appeal request. If an issuer does not submit a written appeal request in the manner and within the time periods described in section 4.03 through 4.05 of this revenue procedure, the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial will become final.

.07 Jurisdiction over tax matters. Once the TEB Examination Office sends the case file to Appeals, jurisdiction over the issues raised in the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial will transfer from the TEB Examination Office to Appeals. Except for matters considered by Appeals under section 2.05 of this revenue procedure (relating to the tax liability of the conduit borrower of the bond proceeds), the TEB Examination Office will retain jurisdiction over all tax matters related to the bond issue under examination that are not specifically raised as an issue in the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial.

.08 Notification to issuer. Simultaneously with the transfer of the case file to Appeals, the TEB Examination Office will furnish to the issuer a copy of the TEB Examination Office's transmittal letter and response, if any, to the issuer's positions stated in its appeal request.

SECTION 5. ARBITRAGE REBATE CLAIM DENIAL FOR TIMELINES

When an appeal of a claim described in either § 1.148-3(i)(3)(iii)(A) or (B) of the Regulations (regarding timeliness) is determined in favor of the issuer, Appeals will release jurisdiction and return the case to the TEB Examination Office for further consideration of the substance of the claim.

SECTION 6. EFFECT OF CERTAIN FINAL ADVERSE BOND DETERMINATIONS OR FINAL

ARBITRAGE REBATE CLAIM DENIALS

.01 Final Adverse Bond Determination. If a Proposed Adverse Bond Determination becomes final under section 4.06 of this revenue procedure or because Appeals sustains the Proposed Adverse Bond Determination without entering into a closing agreement with the issuer, then, depending on the type of bond that was issued: (i) the interest on those bonds will no longer be treated as excludable from gross income under § 103 of the Code, (ii) holders will not be allowed any credit against income tax with respect to interest on those bonds, or (iii) issuers will not be allowed a direct payment. In addition, IRS functions other than Appeals may initiate procedures with respect to open years to, respectively, (i) impose tax on interest on the bonds, (ii) disallow the tax credits, or (iii) if it has not already done so, disallow direct payments with respect to the interest on the bonds. Further, a notice of deficiency may be issued to recover overpayments of direct payments.

.02 Final Arbitrage Rebate Claim Denial. If an Arbitrage Rebate Claim Denial becomes final under section 4.06 of this revenue procedure or Appeals sustains the Arbitrage Rebate Claim Denial in full, the IRS will notify the issuer of the final determination and the issuer's right to bring suit for recovery.

SECTION 7. NO USER FEE

No user fee applies to either a request for an appeal pursuant to this revenue procedure or a closing agreement resulting from the appeal.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-40 is modified and superseded.

SECTION 9. EFFECTIVE DATE

This revenue procedure applies to Proposed Adverse Bond Determinations or Arbitrage Rebate Claim Denials issued by the TEB Examination Office on or after February 4, 2021.

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are B. Darrell Smelcer, Office of Tax-Exempt Bonds (Technical), and Lewis Bell, Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Smelcer at 470-639-2425 (not a toll-free call).

DATED JAN. 5, 2021

How to Appeal Adverse Determinations from the IRS for Tax-Advantaged Bonds: New Guidance - Squire Patton Boggs

The IRS has had a busy start to 2021! Guidance continues to pour forth as the change in Administration approaches. On January 4, the IRS released Revenue Procedure 2021-10, which provides issuers with updated procedures for obtaining review from the IRS Office of Appeals of proposed adverse determinations and rebate refund rejections by the IRS Office of Tax-Exempt Bonds. Rev. Proc. 2021-10 supplements and supersedes Rev. Proc. 2006-40, which previously set forth the procedures for getting to Appeals. Rev. Proc. 2006-40 predated the advent of tax credit and direct pay bonds, and therefore applied only to tax-exempt bonds. As many of you may have experienced, the IRS has applied the logic of Rev. Proc. 2006-40 to tax-advantaged bonds that were not tax-exempt bonds (e.g., BABs) in audits of those bonds. Rev. Proc. 2021-10 adopts this practice.

Specifically, Rev. Proc. 2021-10 provides that an issuer is eligible to request an appeal once the issuer receives (1) a proposed adverse determination that interest on the bonds is not tax-exempt; (2) a proposed adverse determination that an issue of bonds fails to qualify for the tax credits to the bondholders or direct payments to the issuer with respect to the bonds under provisions of the Code applicable to tax-advantaged bonds, such as former §§ 54, 54A, 54AA, 1397E, and 6431; or (3) a proposed adverse determination that denies a claim for a rebate refund. These items are, in effect, your "ticket to Appeals." On items (1) and (2), recall that the "proposed adverse determination" is the final step in the audit process, coming after the "Notice of Proposed Issue" (often referred to as the "30-day letter"). In most bond issues subject to a continuing disclosure undertaking, the receipt of that Notice of Proposed Issue triggers the requirement for the issuer to disclose the audit to the market, although many issuers may choose to disclose before they reach that point.

In addition, Rev. Proc. 2021-10 modifies Rev. Proc. 2006-40 by explicitly giving the issuer 30 days to correct any deficiencies in the appeal that deviate from the requirements in Rev. Proc. 2021-10. (Given the ambiguity in Rev. Proc. 2006-40 on this point, it probably depends on the situation whether this is a positive or negative change.) The new guidance also notes that the TEB Examination Office will furnish to the issuer a copy of the TEB Examination Office's transmittal letter and response, if any, to the issuer's positions stated in its appeal request.

The mechanics of the appeal will continue to be handled under Section 8.7.8 of the Internal Revenue Manual.

There remains no user fee for an appeals request, which is comforting after the IRS recently[1] hiked the user fee for a tax-advantaged bond private letter ruling from $30,000 to $38,000,[2] notwithstanding NABL's recent request to provide for reduced user fees for tax-exempt bonds.

The new procedures apply to proposed adverse determinations for tax-advantaged bonds or denials of rebate refund claims issued by the TEB Examination Office on or after February 4, 2021.

[1] We would say "inexplicably," but there's a pretty clear, if unpalatable, explanation.

[2] And that's just the cover charge.

Squire Patton Boggs

The Public Finance Tax Blog

By Alexis Chandler on January 7, 2021

- SEC Action on Misleading COVID-19 Disclosures: Implications for the Municipal Market – Ballard Spahr
- Can 2020 Bond-Financed Projects Take Advantage of the fixed 4% Rate in the Pending COVID-19 Legislation? – Nixon Peabody
- IRS Procedures Revised for Issuing Letter Rulings.
- Outlook 2021: SEC to Focus on Price Transparency, Muni Advisors and Disclosure Enforcement.

- Substantive Puerto Rico bond decision *here*.
- And finally, That Narrows It Down How, Exactly? is brought to us this week by *A.H. v. Louisville Metro Government*, in which we are confronted by a unique set of aggravating and mitigating circumstances in connection with an inmate's death. In aggravation: It's never a particularly good look when an inmate dies within 24 hours of being booked for civil contempt for falling behind on child support. In mitigation: Observations of inmate's behavior include; "observed pacing and mumbling," "presumed breathing because he was shaking occasionally," "his eyes were bugging out of his head," and. "he had undressed and pushed his clothes out the cell door's food slot." "Surely those must be *aggravating* circumstances," we hear you say. To which we reply, "How does that behavior not describe EVERY LAST MAN WOMAN AND CHILD at this point in time?!!! I certainly know that *I'd* undress and push my clothes out the cell door's food slot. If only my cell had a food slot…

MUNICIPAL ORDINANCE - CALIFORNIA

Hotop v. City of San Jose

United States Court of Appeals, Ninth Circuit - December 7, 2020 - 982 F.3d 710 - 20 Cal. Daily Op. Serv. 12,665 - 2020 Daily Journal D.A.R. 12,969

Owners of rent-stabilized rental housing in city brought civil rights action challenge, on constitutional grounds, the disclosure obligations imposed on them by municipal ordinance.

The United States District Court granted motion to dismiss for failure to state cause of action, and lessors appealed.

The Court of Appeals held that:

- Lessors did not adequately allege that they had reasonable expectation of privacy in information that they were required by ordinance to disclose, and did not state plausible claim to recover for municipality's alleged violation of their Fourth Amendment rights;
- Lessors did not state plausible claim for regulatory taking;
- Complaint contained only vague allegations that the ordinance affected lessors' contracts with tenants and did not state a Contracts Clause claim that was plausible on its face;
- City had rational basis for the distinctions drawn in ordinance based, inter alia, on the significant resources that it would have to expend if ordinance were expanded to include duplexes; and
- Lessors did not state a plausible substantive or procedural due process claim against municipality.

IMMUNITY - KENTUCKY

A.H. v. Louisville Metro Government

Supreme Court of Kentucky - December 17, 2020 - S.W.3d - 2020 WL 7395585

Inmate's estate brought action against city and county's consolidated local government body and director of local department of corrections, among others, alleging multiple torts and constitutional violations seeking compensatory and punitive damages for allegedly withholding inmate's medication.

After removal and remand, the Circuit Court entered four orders granting summary judgment and dismissing all claims. Estate appealed.

The Court of Appeals affirmed. Both sides' requests for discretionary review were granted.

The Supreme Court held that:

- Stipulation drafted by estate and filed in federal court prior to remand did not dismiss government body from case;
- Government body qualified for immunity to claimed statutory violation;
- Claims brought against director in his official capacity were treated as suit against local government body, to which immunity applied;
- Director was entitled to qualified immunity on claims against him in his individual capacity;
- Record failed to indicate that Attorney General was notified of constitutional challenge to statutes, precluding appellate review;
- Statute that creates a private right of action for a violation of a statute does not create a private right of action for violations of the state constitution; and
- The Supreme Court would not create new cause of action.

MUNICIPAL ORDINANCE - OHIO

Ohioans for Concealed Carry, Inc. v. Columbus

Supreme Court of Ohio - December 18, 2020 - N.E.3d ----2020 WL 7409665 - 2020 -Ohio-6724

Gun rights organizations, allegedly composed of gun owners from across the state, filed complaint against city, seeking an injunction and declaratory relief against city ordinances.

The Court of Common Pleas granted activists' request for a permanent injunction enjoining enforcement of ordinance prohibiting the possession of certain firearm accessories, and denying injunctive relief regarding enforcement of ordinance prohibiting individuals convicted of domestic violence from possessing firearms.

The Tenth District Court of Appeals reversed and remanded. Plaintiffs' petition for discretionary review was granted.

The Supreme Court held that:

- Firearms statute did not provide basis for standing;
- Organizations did not have associational standing by virtue of one member's individual-taxpayer standing; and
- Organizations lacked standing to pursue relief under the Declaratory Judgment Act.

Firearms statute, which pertained to ensuring that laws throughout the state regarding right to bear arms were uniform, did not provide basis for gun rights activists to have standing, in declaratory judgment action, to challenge two firearms-related city ordinances that restricted the rights of individuals convicted of misdemeanor domestic-violence offenses from possessing firearms and prohibited "bump stocks" firearms accessories; even if statute implied a private right of action, that did not abrogate the need to establish standing, and plaintiffs' arguments that whether any of them owned or planned to own any of the several firearm components banned by the city did not show they had a personal stake in the outcome of the case.

Gun rights organizations, allegedly composed of firearm owners across the state, did not have associational standing, by virtue of one member's individual-taxpayer standing, to pursue taxpayer action for injunctive relief for allegedly unconstitutional city ordinances that restricted some individuals from possessing firearms and "bump-stocks" firearms accessories, where complaint did not allege that corporations were bringing the action on behalf of that member, but rather, made clear that corporations and their members were suing on behalf of themselves.

Gun rights organizations lacked standing to pursue relief under the Declaratory Judgment Act for allegedly unconstitutional city ordinances that restricted some individuals from possessing firearms and "bump stocks" firearms accessories, where complaint was devoid of any allegation signaling a significant possibility of future injury, as complaint did not contain allegations that organizations' members owned firearms with bump stocks or some other accessory that could be considered within purview of the bump-stocks ordinance, or that any members offered bump stocks for sale, nor did it contain any allegations specific to the weapons-under-disability ordinance.

Gun rights organizations lacked standing to pursue relief under the Declaratory Judgment Act for allegedly unconstitutional city ordinances that restricted some individuals from possessing firearms and "bump stocks" firearms accessories, where complaint was devoid of any allegation signaling a significant possibility of future injury.

PUBLIC UTILITIES - OHIO

In re Determination of Existence of Significantly Excessive Earnings for 2017 Under Electric Security Plan of Ohio Edison Company

Supreme Court of Ohio - December 1, 2020 - N.E.3d - 2020 WL 7033864 - 2020 -Ohio- 5450

Office of Ohio Consumers' Counsel (OCC) sought judicial review of orders of the Public Utilities Commission finding that an electric-distribution utility's earnings for a particular year were not excessive, challenging the Commission's decision to remove the utility's revenue collected under its distribution modernization rider (DMR) from the excessive-earnings test.

The Supreme Court held that:

- Commission violated statute governing electric security plans (ESP) by removing DMR revenue;
- Court lacked jurisdiction over issue of whether Commission violated statute requiring it to file written opinions;
  OCC established harm resulting from Commission's decision; and
- Court had jurisdiction to remand for new excessive-earnings proceeding.

Public Utilities Commission violated the statute governing electric security plans (ESP) by removing an electric-distribution utility's revenue collected under its distribution modernization rider (DMR) from the test to determine whether the utility's ESP resulted in significantly excessive earnings compared to companies facing comparable risk; the Commission offered no explanation as to how the statute permitted exclusion of the revenue as introducing an unnecessary element of risk that undermined the DMR's purpose of providing credit support, and the DMR was an adjustment under the statute of the sort the Commission was required to include when determining whether an ESP resulted in excessive earnings.

Supreme Court lacked jurisdiction over issue of whether the Public Utilities Commission violated the statute requiring the Commission to file written opinions in all contested cases by failing to explain the statutory and evidentiary bases for excluding an electric-distribution utility's revenue collected under its distribution modernization rider (DMR) from the test to determine whether the utility's electric security plan (ESP) resulted in significantly excessive earnings compared to companies facing comparable risk, where the Office of Ohio Consumers' Counsel did not allege a violation of the statute in its application for rehearing before the Commission challenging the DMR decision.

Public Utilities Commission's claim that it sought to improve electric-distribution utility's capital structure was not a basis for affirming its decision to remove the utility's revenue collected under its distribution modernization rider (DMR) from the test to determine whether the utility's electric security plan (ESP) resulted in significantly excessive earnings compared to companies facing comparable risk, where the Commission, in rendering its decision, never said it was making an adjustment for capital structure when it removed DMR revenue, and the utility did not argue that removal of the revenue was justified on such ground.

Need for a valid comparison based on comparable risk was not a basis for affirming the Public Utilities Commission's decision to remove an electric-distribution utility's revenue collected under its distribution modernization rider (DMR) from the test to determine whether the utility's electric security plan (ESP) resulted in significantly excessive earnings compared to companies facing comparable risk, where the Commission never mentioned the comparable-risk clause in the ESP statute's provision requiring the excessive-earnings test as its reason for excluding the DMR revenue.

Purported status of revenue earned by an electric-distribution utility under its distribution modernization rider (DMR) as an extraordinary item or an additional liability or write-off of a regulatory asset, so as not to be part of the utility's earned return on common equity, was not a basis for affirming the Public Utilities Commission's decision to remove DMR revenue from the test to determine whether the utility's electric security plan (ESP) resulted in significantly excessive earnings compared to companies facing comparable risk, where the Commission did not rely on the utility's argument regarding such a status or make express or implied findings to support it, and the application seeking the Commission's analysis did not mention an exclusion of DMR revenue as an extraordinary item.

Office of Ohio Consumers' Counsel (OCC) established harm resulting from the Public Utilities Commission's decision to remove an electric-distribution utility's revenue collected under its distribution modernization rider (DMR) from the test to determine whether the utility's electric security plan (ESP) resulted in significantly excessive earnings compared to companies facing comparable risk, as required to seek reversal of an order of the Commission; the OCC was not required to show that ratepayers were entitled to a refund to establish harm, but instead the OCC's harm was that the utility was not required to include its DMR revenue in its earnings for the excessive-earnings test.

Supreme Court had jurisdiction to remand to the Public Utilities Commission for a new proceeding to determine whether an electric-distribution utility's electric security plan (ESP) resulted in significantly excessive earnings compared to companies facing comparable risk, in an appeal brought by Office of Ohio Consumers' Counsel challenging the Commission's decision to exclude the utility's revenue collected under its distribution modernization rider (DMR) from the excessive-earnings test, where the Commission did not decide a return-on-equity threshold for the test, so that it was unclear whether inclusion of the DMR revenue would have resulted in a return-on-equity calculation that exceeded the applicable threshold.

Office of Ohio Consumers' Counsel (OCC) did not waive its challenge to a stipulation approved by the Public Utilities Commission, which recommended that the Commission find that utility's electric security plan (ESP) did not result in significantly excessive earnings compared to companies facing comparable risk; the OCC was not required to argue on appeal that the stipulation did not meet the three criteria necessary for approval of a stipulation, but instead it was enough for the OCC to argue that the Commission's orders were unlawful and unreasonable because it removed the utility's revenue collected under the utility's distribution modernization rider (DMR) in making an excessive-earnings determination, which directly implicated the Commission's approval of the stipulation.

PUBLIC UTILITIES - OHIO

Corder v. Ohio Edison Company

Supreme Court of Ohio - November 12, 2020 - N.E.3d - 2020 WL 6600368 - 2020 -Ohio-5220

Landowners who were organic farmers brought action seeking declaratory and injunctive relief regarding scope electrical transmission line easement, specifically whether electric utility could use herbicides to control vegetation within easement.

The Court of Common Pleas entered a judgment after sua sponte finding that Public Utilities Commission of Ohio (PUCO) had exclusive jurisdiction. Landowners appealed. The Court of Appeals reversed. Utility sought discretionary review.

The Supreme Court held that landowners' action was within subject-matter jurisdiction of common pleas court and was not within PUCO's exclusive jurisdiction.

Landowners' action seeking declaratory and injunctive relief regarding scope of electrical transmission line easement, specifically whether electric utility could use herbicides to control vegetation within easement, was within subject-matter jurisdiction of common pleas court, and was not a matter within the exclusive jurisdiction of Public Utilities Commission of Ohio (PUCO); determination of scope of easement did not depend on PUCO's exercise of its administrative expertise or its review of a public utility's vegetation-management program, but rather required a court to interpret and apply the language of the instrument creating the easement.

When a declaratory judgment action seeks an adjudication of the terms of an electrical transmission line easement to determine respective property rights of a landowner and a public utility, that particular class of case is not within the exclusive jurisdiction of Public Utilities Commission of Ohio (PUCO), but rather may be heard and decided by a court of common pleas.

BONDS - PUERTO RICO

Altair Global Credit Opportunities Fund (a), LLC v. United States

United States Court of Federal Claims - November 23, 2020 - Fed.Cl. - 2020 WL 6865053

Bondholders filed suit against United States, seeking just compensation for alleged taking of their pledged property serving as collateral for their bonds issued by Puerto Rico's employers retirement system (ERS), including their right to receive timely principal and interest payments, as well as their purported liens on and contractual right to future employer contributions to ERS, after Oversight Board established by Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), incorporating Bankruptcy Code, to pursue judicially supervised debt restructuring for Puerto Rico drafted ERS bond legislation and mandated its enactment to transfer bondholders' collateral to

Puerto Rico without compensation.

Government moved to dismiss for lack of subject matter jurisdiction and for failure to state claim.

The Court of Federal Claims holds that:

- Board was not federal entity within Tucker Act jurisdiction;
- Board’s actions were not attributable to United States;
- PROMESA did not bar Tucker Act jurisdiction;
- Bondholders lacked property interest required for takings claim based on liens; and
- Impairment of bondholders’ contractual right was insufficient for taking.

Puerto Rico’s Financial Oversight and Management Board that allegedly effected taking of bondholders’ liens on their pledged property and their contractual right to timely payment of principal and interest by Puerto Rico’s Employers Retirement System (ERS), as issuer of bonds, was not “federal entity” subject to Tucker Act jurisdiction, but rather, was “local entity,” under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), providing that Board “shall be created as an entity within the territorial government” and “shall not be considered to be a department, agency, establishment, or instrumentality” of federal government, and Congress gave Board structure, duties, and powers consistent with entity in territorial government.

Puerto Rico Financial Oversight and Management Board’s actions, that allegedly effected taking of bondholders’ liens on their pledged property and their contractual right to timely payment of principal and interest by Puerto Rico’s Employers Retirement System (ERS), as issuer of bonds, could not be attributed to United States, under sole-sovereign doctrine, thus barring exercise of Tucker Act jurisdiction over claims under Fifth Amendment Takings Clause that applied to Puerto Rico through Fourteenth Amendment, since Board was instrumentality of Puerto Rico, and Board’s acts were attributable to Puerto Rico as expressly directed in Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

Court of Federal Claims’ prior determination that Congress did not withdraw Tucker Act jurisdiction in Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) or direct all suits under PROMESA to federal district court was law of the case that barred United States from asserting that same argument in subsequent motion to dismiss for lack of jurisdiction over bondholders’ takings claims arising from their alleged liens on and contractual right to future contributions to Puerto Rico’s employers retirement system (ERS), as issuer of bonds.

Bondholders’ takings claims arising from their alleged liens on and contractual right to future contributions to Puerto Rico’s employers retirement system (ERS), as issuer of bonds, was ripe, even though bondholders were still litigating value of their bonds in other courts, since claims were based on retroactive application of Bankruptcy Code provision incorporated in Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), and bondholders’ separate ongoing litigation only affected extent of damages.

Prior determination by district court and First Circuit, that under Puerto Rico law bondholders did not have property interest in alleged liens on future employer contributions to Puerto Rico’s employers retirement system (ERS), as issuer of bonds, collaterally estopped bondholders from relitigating issue of whether they had property interest required for their claims seeking just compensation for alleged taking of their purported liens; issue of property interest in liens was identical to issue in prior proceeding, was litigated and resolved, and was necessary to resulting judgment, and bondholders had full and fair opportunity to litigate that issue.

Under Puerto Rico law, bondholders lacked property interest in their purported liens on future employer contributions to Puerto Rico's employers retirement system (ERS), as issuer of bonds, thus barring their claims seeking just compensation for alleged taking of their liens, since ERS did not have property interest in future employer contributions as they were merely expectancy rather than fixed and calculable at time of ERS's petition under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) provision incorporating Bankruptcy Code providing that property acquired by debtor after petition was not subject to any lien resulting from any security agreement entered into by debtor before petition.

Bondholders lacked property interest in their contractual right to future employer contributions to Puerto Rico's employers retirement system (ERS), as issuer of bonds, thus barring bondholders' claims seeking just compensation for alleged taking of their contracts by ERS's petition under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) provision incorporating Bankruptcy Code, since bonds were not taken by petition or underlying statutory authority, but rather, their value was impaired, which was insufficient for taking, as at most, Bankruptcy Code took some subject matter of contract, namely, future employer contributions, but not contract itself.

Government's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), incorporating Bankruptcy Code, that enabled Puerto Rico's debt restructuring, did not result in regulatory taking of bondholders' contractual right to future employer contributions to Puerto Rico's employers retirement system (ERS), as issuer of bonds, by cutting off bondholders' ability to receive benefit of future employer contributions to ERS; Penn Central factors weighed against taking, as contributions were merely expectancy and bonds still existed, United States did not interfere with investment-backed expectations of bondholders who were warned that bankruptcy was possibility, and government had legitimate interest in mitigating Puerto Rico's fiscal emergency.

EMINENT DOMAIN - VIRGINIA

Palmyra Associates, LLC v. Commissioner of Highways

Supreme Court of Virginia - December 17, 2020 - S.E.2d - 2020 WL 7393500

Department of Transportation (DOT) filed petition in condemnation after recording certificate of take.

The Circuit Court entered order confirming commissioners' award of $107,131 for the take and setting aside the award for damages to the residue. Landowner appealed.

The Supreme Court held that:

- Landowner's ten-year-old site plans were not admissible to establish damages to the residue;
- Landowner's testimony concerning lost "development potential" was speculative and inadmissible to establish damages to the residue; and
- Invited error doctrine precluded consideration of claim that the trial court erred in putting the parties on terms of either the court confirming the value of the taken property or ordering a new trial.

Landowner's ten-year-old site plans were not admissible in eminent domain action to establish damages to the residue of the property not taken, where site plans had not been approved, landowner had not met conditions which county had imposed on approval, it was unclear whether site plans would require retaining wall, widened road, or bridge, and plans required entrance to proposed development for which landowner would have to gain approval.

Landowner's testimony concerning lost "development potential," which was necessarily rooted in a lost "pad site," was speculative and inadmissible in eminent domain action to show damages to the residue; pad site depended on contingent and speculative site plans, property's development potential was uncertain because the county had imposed certain conditions, which had not been satisfied, the property was situated in a flood plain, which would necessitate adjustments, and the property would need additional infrastructure changes to be developed as a commercial site.

Invited error doctrine precluded consideration of landowner's claim on appeal in eminent domain action that the trial court erred in putting the parties on terms of either the court confirming the value of the taken property or ordering a new trial, where landowner did not object at that time that the trial court was "putting it on terms," but instead agreed that the circuit court should confirm the award rather than grant a new trial.

Can 2020 Bond-Financed Projects Take Advantage of the fixed 4% Rate in the Pending COVID-19 Legislation? - Nixon Peabody

The just-signed COVID-19 legislation finally fixes the bond-financed LIHTC credit rate to be at least 4%, but there are transition rules. In this alert, we discuss how those rules apply to several deal structures, particularly projects with 2020 bonds.

By now, you are well aware that the COVID-19 legislation provides a 4% fixed low-income housing tax credit (LIHTC) rate for bond-financed affordable housing projects that meet certain requirements. As you will see from the transition rule in the next section, the fixed-rate should plainly apply to bond-financed projects that rely on 2021 bonds and are entirely placed in service after 2020. And for the sake of completeness, we'll note that for ***non-bond financed*** projects, the fixed 4% rate applies to acquisitions of used buildings ***provided*** the credits were ***allocated after 2020***.

With those general rules out of the way, this NP alert discusses (i) possible strategies for projects with 2020 bonds as well as (ii) the treatment of used projects acquired before 2021 but financed with post-2020 bonds.

The law

Under the pending COVID-19 relief legislation, for a bond–financed project to qualify for the 4% floor, the building has to:

- Be placed in service after 2020, and
- Comply with this language: "in the case of any building any portion of which is financed with an obligation described in section 42(h)(4)(A), any such building if any such obligation which so finances such building is issued after December 31, 2020."

The big picture

One question that we are getting a lot is whether projects with undisbursed 2020 bond proceeds can qualify for the new 4% floor. To answer this question, the tax credit community would genuinely benefit from a statement from the IRS or a "Blue Book" report from one of the congressional committees (which have been known to take nine months to two years) to answer the questions discussed below. Without such government guidance, whether to claim fixed 4% credits for projects relying on bonds sold in 2020 but not "drawn down" until 2021 or later is entirely about two things: (i) risk-taking and (ii) 42(m) letters.

Risk-taking

We refer to risk-taking because it is ***possible*** to write a legal opinion where the project relies on 2020 bonds, but some or all of the bonds are drawn down in 2021. As you may remember, this comes from a position taken previously by the IRS where "the shoe was on the other foot." A few years ago, the law for tax-exempt bonds got ***worse*** for bond issuances after a certain date, so everyone ran out and issued bonds ahead of the law change and sat on the proceeds. And the IRS said, "Not so fast; we're going to define issuance to mean when you draw down the proceeds!" And as a result, the bonds were now considered to be "issued" later, and they no longer escaped the new rules.

But now, when everyone wants the ***opposite*** result and for the bonds to, in fact, be delayed, it's hard to say whether the IRS will apply the same "draw-down" rule. If it did, then many 2020 bonds that still have undrawn funds would be treated as 2021 "issuances" eligible for the fixed-rate. On the other hand, the IRS might say that ***this time***, "issuance" has the traditional, common-sense meaning, and the fixed-rate only applies to bonds that are literally sold after 2020.

But truth is, it's the parties' risk anyway. Any legal opinion will be based on decent precedents and wouldn't be "wrong." It would be the parties' choice to take the chance. And, we suppose the parties ***might*** take that chance, figuring, "Come on, will the IRS really threaten the stability of a low-income project because the parties took a defensible if aggressive position?" This is really a question for the sponsors and investors. How big a risk is too big a risk? Given the uncertainty involved, NP does not currently plan to issue opinions on 2020 bonds possibly qualifying for the 4% floor without further guidance from the IRS or a congressional report.

42(m) letters

The second issue is 42(m). The state agency has to find that the project ***needs*** the credits. If the parties close a deal on 3.1% credits, and then the owners ask the agency to bless an increase to 4%, won't the parties have to revaluate the sources of financing, and the state agency revise its assessment of how much credit authority is needed? And, vice versa, if they start at 4%, and have to go downwards, won't there be similar problems? What will the parties do with a closed deal that suddenly gets 4% credits? Build a larger/better project? Reject one of the soft financing sources? Pay off the development fee faster? (If the state will allow it!) And if we go in the other direction (planning to claim 4% credits, only to have the IRS or a congressional committee issue an unfavorable notice or report), how are we going to shrink the project or bring back the soft sources that were previously dropped?

It seems that a project sponsor has to go in one direction or the other. It must either take the position that it is entitled to 4% credits, get the state to agree, and adjust sources and uses accordingly, or conclude that it is stuck at (approximately) 3.1% and leave everything alone.

Using some 2021 bonds

There's also the possibility of using ***some*** 2021 bonds. I do think that a project ***partially*** funded with

2021 bonds ***should*** work. I have heard it said that relying on partial-2021 bonds wasn't intended, but the new Code provision uses the word ***"any"*** FOUR times—the rules apply to any building if ***any*** portion is financed by volume cap bonds, provided ***any*** such building is financed by ***any*** such obligation issued after 2020. I think it will be hard for anyone in Congress to say, "We didn't mean what we plainly wrote."

So, if a $6M project has $3.1M of 2020 bonds, and it goes back to the state and asks for $100K of 2021 bonds, this looks like "any" part of the building was financed by bonds that "any" part of came from a post-2020 issuance.

One important qualifier: we're not talking about ***refunding*** bonds. The statute refers to obligations described in Section 42(h)(4)(A), which thereby incorporates the "taken into account under Section 146" language that use to trouble the IRS legal team. They thought this language meant that refundings don't qualify a project for LIHTCs. Whether or not you agree with that view, the new legislation does not give you any new ammunition. So, when we talk about an additional $100K of bonds, we're referring to a "fresh" $100K of bonds on top of what you already have (i.e., now you have $3.2M of bonds in our illustration).

Having said this with confidence, we must also say that we have heard colleagues and industry insiders express doubt about this idea as well, especially where the 2021 portion of the bonds is as small as we have suggested here.

And, even if you buy this argument, this still brings you back to the 42(m) conundrum. If you get 4% credits, you are still going to have to get state agency sign off on what you do with them. So, at this time, it's not clear whether a small issuance of 2021 bonds can enable a project to claim fixed 4% LIHTCs.

Acquisitions of used facilities in 2020 with 2021 bonds

Finally, there is one other deal structure that we have already seen, and there will undoubtedly be more.

Suppose a used building is acquired by an LIHTC partnership in 2020, and it is already occupied. It gets "official action" at the time of acquisition so that the acquisition can be bond-financed. However, the actual bond issuance is indisputably in 2021. On those facts, these seem to be two "separate buildings" for tax credit purposes. One building, the acquisition, fails the first part of the transition rule, on account of being placed in service in 2020, and, therefore, gets the floating rate. On the other hand, the rehabilitation, treated as a separate new building under Section 42, seems to pass both parts of the rule and should get a fixed-rate.

Going forward

We'll try to keep you updated as other ideas and issues are presented. On the Blue Book concept, we made a suggestion to one of the housing trade groups based on something that happened with another tax credit. A few years back, when the historic tax credit was modified, recognizing that Blue Books take a very long time to be issued, the Historic Tax Credit Coalition got a leading senator to make a statement on the floor of the Senate about how the new provision should be interpreted. It gave the investors and their lawyers comfort about writing opinions. Of course, it should be remembered that Congress could take the opposite view. Some have suggested that the statutory language was intended to keep the fiscal cost down by foreclosing the possibility of favorable treatment for pre-2021 projects and that any interpretation of the Code provisions should be made with that result in mind. In other words, it is possible that, if asked, a Congressional leader would

not give the answer we are hoping for.

Nixon Peabody

by Forrest David Milder

December 29, 2020

Community Development Finance Alert

The foregoing has been prepared for the general information of clients and friends of the firm. It is not meant to provide legal advice with respect to any specific matter and should not be acted upon without professional counsel. If you have any questions or require any further information regarding these or other related matters, please contact your regular Nixon Peabody LLP representative. This material may be considered advertising under certain rules of professional conduct.

Outlook 2021: SEC to Focus on Price Transparency, Muni Advisors and Disclosure Enforcement.

The Securities and Exchange Commission's enforcement activity will have a strong focus on issuer disclosure, municipal advisors, and pay-to-play practices in 2021.

Despite changes not only in presidential administrations but a new SEC chair a new director of enforcement, sources expect the SEC to stay vigilant if not more intense in its enforcement actions.

"The core organizing principle is that we want to pursue, and we prioritize, cases where there is a clear risk of investor harm,? said LeeAnn Gaunt, chief of the SEC's Public Finance Abuse Unit. "We also consider it a key part of our mission to protect issuers, particularly small, infrequent issuers, from abusive practices by municipal advisors and broker-dealers."

In 2020, the SEC brought numerous cases against MAs and broker-dealers.

Prominently, the SEC continued a two-year crackdown of individuals and broker-dealers firms involved in "flipping" arrangements in 2020. Since 2018, there were multiple cases brought involving individuals and firms posing as retail investors to gain priority access to new-issue municipals. The bonds were then "flipped" for profit.

The SEC also charged a charter school in 2020 for misleading investors in a $7.6 billion municipal bond offering. In April, the SEC charged the CEO and director of finance of a public charter school with misleading investors.

"Investor protection is our mission and is always our primary focus," Gaunt said. "Although new leadership does bring change, I think everyone appreciates the importance of the municipal securities market and supports enforcement where there are abuses in that market."

In 2021, MA enforcement and issuer disclosure will continue to be active, Gaunt said. The SEC will be focused on fraud in primary offerings, especially with distressed issuers. The SEC is also concerned about muni advisors' breaches of fiduciary duties, and staff prioritizes those cases, Gaunt said.

The SEC is also still seeing issues with firms and individuals providing municipal advice to issuers without registering as such, Gaunt said. In September, the SEC settled charges with consultant Irene Carroll after the regulator found she provided municipal bond advice to charter schools without registering as an MA.

The SEC will also focus on the lack of transparency and pricing of municipal securities, former SEC lawyers say.

“It all goes back to the idea, that equity security, like corporate stock and so forth, the staff has always believed and some commissioners that there is not the same liquid, robust market that regularly makes pricing available,” said Peter Chan, partner at Baker McKenzie and former SEC enforcement lawyer.

“The past year has shown that the SEC wants to use its enforcement power to address this concern,” Chan added. “There will be more to come.”

A new SEC chair will be chosen by President-elect Joe Biden this year and confirmed by the Senate. Former Chair Jay Clayton departed at the end of the year and t Director of Enforcement Stephanie Avakian also left. These moves are common as a new administration rolls in.

Changes in top seats will not change the aggressiveness of the SEC?s enforcement, and if anything will bring more intensity, Chan said.

“With the new administration with a Democrat president, the expectation is that enforcement will be at minimum just as aggressive if not more aggressive in activity and the level of focus and energy,” Chan said.

A Democratic administration also tends to lead with a view that the SEC should be more aggressive in overall enforcement and SEC chairs appointed by Republicans historically want to protect the market, Chan said.

Changes in administration don’t mean much to the muni market specifically.

“These changes in the administration don’t necessarily mean a big shift in policy – at least in the muni world it’s a little more steady,” said Dave Sanchez, senior counsel at Norton Rose Fulbright. “Ultimately it is a positive that folks can have a little more security of where the SEC is likely to go and where their focus will be because it’s probably not going to dramatically change.”

A new SEC chair also won?t have a material impact on muni enforcement. Sanchez said.

“You’re going to see the priorities that have been identified by the Public Finance Abuse unit, as well as the Office of Municipal Securities, continue to be prominent without having any external interference,” Sanchez said.

Sanchez expects that muni enforcement will be focused on the transition to LIBOR, disclosure issues, issues related to COVID-19 disclosures and cybersecurity.

“It’s the big general themes, but there might be some more specific focus on current topics that inform those themes,” Sanchez said.

Other sources said it was difficult to determine what role the next SEC chair would have.

“Clayton was a corporate guy but was definitely focused on disclosure, but it?s hard to say,” said

Rebecca Lawrence, senior counsel at Ballard Spahr.

Before joining the SEC, Clayton was a partner at Sullivan & Cromwell LLP where he was a member of the firm's Management Committee and co-head of the firm's corporate practice.

Whoever is in charge next though will be focused on more timely financial disclosure from issuers. Clayton keenly focused on that issue as chair demanding more timely and interim information from states and local governments. That issue has been ongoing for the past few decades.

Into 2021, the SEC is likely to keep an eye on MA enforcement since it is still a relatively newly-regulated group, Lawrence said. The Dodd-Frank Act of 2010 subjected non-dealer MAs for the first time to a federal regulatory regime and required all MAs to have a fiduciary duty to put issuers? interests before their own.

As for broker-dealers, the SEC may focus on enforcing Regulation Best Interest, Lawrence added. Reg BI strengthens the broker-dealer standard of conduct beyond existing suitability obligations and makes it clear that a broker-dealer may not put its financial interest ahead of a retail investor. It also requires broker-dealers and investment advisers to state clearly facts about their relationship with their customers, including financial incentives. That rule went into effect during the summer of 2020.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11:38 AM EST

[SEC Action on Misleading COVID-19 Disclosures: Implications for the Municipal Market - Ballard Spahr]

Summary

The U.S. Securities and Exchange Commission (SEC) announced earlier this month it settled charges against a corporate issuer of registered securities for misleading disclosures about the impact of the COVID-19 pandemic on its business operations and financial condition in connection with its required Form 8-K filings.

The Upshot

- The SEC alleged the company's Forms 8-K were materially false and misleading because in the context of a press release attached to a Form 8-K filing that said its restaurants were "operating sustainably," the company failed to disclose financial hardships.
- While municipal issuers are not subject to required Form 8-K filings, the SEC has strongly urged the municipal market to provide voluntary disclosures to Electronic Municipal Market Access (EMMA) in the light of COVID-19.
- The settlement is the SEC's first enforcement action against a public company for misleading COVID-19 disclosures.

The Bottom Line

The Order—as well as other prior SEC actions—signifies the SEC may not hesitate to scrutinize issuers' pandemic-related disclosures, which could have implications for municipal issuers.

FULL ALERT

The U.S. Securities and Exchange Commission (SEC) announced earlier this month it settled charges against a corporate issuer of registered securities for misleading disclosures about the impact of the COVID-19 pandemic on its business operations and financial condition in connection with its required Form 8-K filings (the Order).

The Order, as well as other prior SEC actions, signifies the SEC may not hesitate to scrutinize issuers' pandemic-related disclosures, which could have implications for municipal issuers.

In the Order, the SEC alleged that the company violated Section 13(a) of the Exchange Act and Rules 13a-11 and 12b-20 thereunder, which collectively require an issuer of a registered security to file accurate reports to the Commission on Form 8-K that contain material information necessary to make the required statements made in the reports not misleading.

The SEC alleged that in March 2020 the company's Forms 8-K were materially false and misleading because in the context of a press release attached to a Form 8-K filing that said its restaurants were "operating sustainably," the company failed to disclose the following:

- A letter the company sent to each of its restaurant landlords stating that the company was not going to pay rent for April 2020.
- The company was losing approximately $6 million in cash per week.
- It had only approximately 16 weeks of cash remaining.

In a press release accompanying the Order, the SEC included a reminder about the Corporate Issuer Statement of April 8, 2020, on the importance of disclosure. See our 2020 Mid-Year Newsletter for a recap of SEC statements and disclosure guidance related to COVID-19 for municipal issuers and market participants.

While municipal issuers are not subject to required Form 8-K filings, the SEC has strongly urged the municipal market to provide voluntary disclosures to Electronic Municipal Market Access (EMMA) in light of COVID-19.

SEC Chairman Clayton and Rebecca Olsen, Director of the Office of Municipal Securities, issued a public statement (Public Statement) on May 4, 2020, encouraging municipal issuers and conduit borrowers to voluntarily disclose future prospects regarding financial and operating status in light of the effects of, and economic and operational uncertainties created by, COVID-19. The Public Statement set forth examples of types of COVID-19 related disclosures Clayton and Olsen believe would be most beneficial for investors and the marketplace.

As an acknowledgement of the potential exposure municipal issuers and conduit borrowers face in making statements to the financial markets, Clayton and Olsen said in the Public Statement that they would not expect good faith efforts to provide "appropriately framed" current and forward looking information would be second guessed by the SEC. See our white paper on how to appropriately frame forward looking statements.

However, the omission of negative material facts such as those described in the Order presents a clear path to SEC scrutiny, especially in the context of another statement in a press release that the company was operating sustainably. The same set of facts outside a COVID-19 situation could be problematic—in both a primary offering document or a voluntary disclosure, regardless of the subject matter of the disclosure.

Ballard Spahr LLP

by the Municipal Securities Regulation and Enforcement Group

Rebecca Lawrence & Teri Guarnaccia

December 30, 2020

Fall 2020 Fiscal Survey of States: NASBO

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

Overview – Fall 2020

State general fund spending in fiscal 2021 is projected to decline for the first time since the Great Recession, based on enacted budgets. After nine consecutive years of budget growth, states saw revenue fall in fiscal 2020, and greater declines are expected in fiscal 2021. Weakening revenue projections resulting from the COVID-19 recession led states to reduce general fund spending by **1.1** percent compared to fiscal 2020 and by **5.5** percent compared to governors' budgets proposed before the pandemic.

Other key findings from the report:

- State general fund revenue is projected to decline by **4.4 percent** in fiscal 2021 compared to already depressed fiscal 2020 levels, or by **10.8 percent** compared to revenue projections in governors' pre-pandemic budget proposals, based on the most current estimates available when data were collected.
- Fiscal 2020 general fund revenues declined **1.6 percent** compared to fiscal 2019, or by as much as **2.9 percent** when only counting the **45 states** that operated on a July to June fiscal year. **35 states** reported general fund collections for fiscal 2020 from all sources came in lower than original budget projections.
- The tax deadline shift from April to July affected fiscal 2020 revenue collections in **19 states** that counted these delayed payments as fiscal 2021 revenue. Among these states, 17 were able to

provide estimated deferral amounts totaling **$10.2 billion**, revenue that would have otherwise been collected in fiscal 2020.
- Rainy day fund and total balances were at record highs before the pandemic hit but are now on the decline as states turn to reserves to address budget shortfalls. Total balances are already projected to decline by **$33.3 billion** in fiscal 2021 compared to fiscal 2019 levels.
- Note: The fiscal 2021 data in this report represent a point in time, as spending and revenue projections continue to be moving targets. State-by-state data also reflect differing points in time depending on when a state enacted its budget for fiscal 2021 and how often a state revises its revenue forecast.

Downloads:

- Summary
- Full Report

2020 State Expenditure Report: 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
- Full Report

How Small Towns Can Ride The Public-Private Partnership Wave.

Public-private partnerships offer a unique opportunity to redevelop and revitalize smaller communities around the country. A public-private partnership, also known as a P3 or PPP, is an agreement between a private company and a public body that allows for the public sector to transfer certain risks and responsibilities to the private sector. P3s, when structured properly, can provide an opportunity for small communities to develop new facilities and infrastructure, which can be a catalyst for community redevelopment. Two popular P3 delivery methods are known as a design-build-finance (DBF) and design-build-finance-operate-maintain (DBFOM). These delivery methods can be used to relieve significant burdens and risks from the public sector.

Urban communities have gotten a lot of attention in recent years for improving assets using public-private partnerships. The lack of public funding and the abundance of private capital has made P3 a popular tool for delivering public facilities and infrastructure. However, smaller underserved communities also have significant needs for improved facilities and infrastructure. The needs of smaller communities are much more pressing than those of sprawling urban centers.

Complicating the issue is the fact that many smaller communities often have not constructed new facilities or infrastructure in decades. A well-structured P3 shifts risk from the public sector to the private sector while focusing on allowing the construction activity to be executed by local contractors, subcontractors and vendors. A well-structured P3 also allows municipalities to incorporate small and minority-owned business participation requirements that can be managed in a more transparent manner. The use of national resources partnered with the local workforce creates an inherent best value proposition for the community. When the construction dollars stay within the local community, these dollars can turn over six to seven times, creating a significant impact on the bottom line for the community.

Smaller communities typically do not have the technical resources and expertise to deliver capital projects efficiently. Also, the traditional design-bid-build methodology has proven to be a time-consuming and often more costly method of delivering public projects, especially in smaller communities. The lack of sophisticated construction management experience and the lack of integration between the design, construction and finance often results in projects that are over budget and of inferior quality. However, these communities still have a substantial need for new infrastructure, public safety facilities, courthouses, healthcare facilities, parks, museums and much more. The ability to make needed improvements to public facilities and infrastructure results in a better quality of life for the citizens and increased revenues for the public agency.

A well-structured P3 should accomplish a number of important things for smaller communities. In addition to gaining technical expertise, these communities should be able to take advantage of tax-exempt financing as well as no upfront costs for attorney fees, program managers, site acquisition, architectural design, engineering, etc. The private sector is well suited and well-capitalized to carry these upfront expenses, which can be as much as 18%-20% of the total project cost.

P3s also allow the private sector the ability to structure financing for essential facilities and infrastructure in a manner that does not require a pledge of full faith and credit from the public entity. When a public entity does not pledge its full faith and credit, in most states, this eliminates the requirement of a bond referendum and also does not impact the general obligation capacity of the community.

A tax-exempt lease purchase agreement is a common structure used to deliver P3 projects quickly and efficiently and is a perfect structure for small communities. Under a tax-exempt lease purchase agreement, the private sector establishes a special purpose entity to hold the asset. At the end of the lease purchase term, which can be up to 30 years, the government purchases the asset for $1.

Using a tax-exempt lease purchase agreement to fund a P3 project ensures that the private developer is working for a fixed fee and that the community is able to fund the project with the lowest cost of capital. Under this structure, essential facilities and infrastructure can typically be financed with semi-annual payments that are subject to annual appropriations and the availability of funds. Tax-exempt financing also offers long-term fixed rates, which are a much more attractive proposition than commercial bank financing.

Forbes

by Dee Brown

Dec 29, 2020

USDOT Launches New Regional Infrastructure Accelerators Program.

The program will expedite delivery of transportation infrastructure projects through innovative finance and delivery methods.

A new demonstration program has been launched by the U.S. Department of Transportation (USDOT) to establish several Regional Infrastructure Accelerators (Accelerators), which aims to expedite the delivery of transportation infrastructure projects through innovative finance and delivery methods.

The department's Build America Bureau (the Bureau) issued a Notice of Funding Opportunity to solicit applications to designate Accelerators that will serve defined geographic areas, act as a resource to qualified entities within the designated areas and demonstrate the effectiveness of these Accelerators to expedite the delivery of eligible projects through federal credit assistance programs, including Transportation Infrastructure Finance and Innovation Act (TIFIA) and other innovative financing methods. A total of $5 million is available for the program.

"These Regional Infrastructure Accelerators will deliver projects more quickly to local communities through innovative financing methods," said U.S. Transportation Secretary Elaine L. Chao.

The Accelerators will assist project sponsors in project planning, evaluating innovative financing options, accessing technical assistance and best practices and developing a pipeline of projects ready for investment. The Bureau will administer the Regional Infrastructure Accelerator program. The Bureau was established as a "one-stop shop" to streamline credit opportunities while also providing technical assistance and encouraging innovative best practices in project planning, financing, delivery and operation.

During Secretary Chao's tenure at USDOT, the Bureau has closed more than $9.91 billion in TIFIA and Railroad Rehabilitation and Improvement Financing (RRIF) loans, supporting more than $33.16 billion in infrastructure investment across the country. Under Secretary Chao's leadership, the USDOT has sought to address the unique challenges rural communities face in upgrading their infrastructure. Last year, Secretary Chao announced the Rural Opportunities to Use Transportation for Economic Success (ROUTES) Initiative to address disparities in rural transportation infrastructure investment. Additionally, the department launched the TIFIA Rural Project Initiative (RPI) to assist rural communities in overcoming financial barriers that slow infrastructure investment in rural America.

U.S. Department of Transportation (DOT)

Dec 29th, 2020

[Fitch: Large U.S. Western Metros Continue Trend of Slower Recovery]

Fitch Ratings-New York-30 December 2020: Employment in U.S. metros rebounded from losses caused by the coronavirus pandemic, although the median recovery in Western metros is eight percentage points lower than the national rate. The recovery's sustainability may be vulnerable to surging COVID-19 cases and hospitalizations, according to Fitch Ratings' latest U.S. Metro Labor Markets Tracker.

The median jobs recovery rate among major MSAs improved between September and October, rising to 62% from 54%. Nationally, 81% of all metros have recovered at least 50% of their employment losses. The median Fitch-adjusted unemployment rate for major metros was 8.2% during October, a significant deviation from the median official national unemployment rate of 6.3% for major metros.

Time will tell if rising COVID-19 cases and hospitalizations present short-term challenges for metros to regain pre-pandemic employment levels. "High frequency metro data in addition to weaker national data in November and December point to the beginning of an economic slowdown," said Senior Director Olu Sonola.

Fitch foresees regional differences in the impact of surging coronavirus cases and hospitalizations given the varying policy responses across state and local governments. "Slowing employment growth or fresh declines as a result of renewed lockdowns could strain budgets even further and affect long-term tax revenue growth prospects," said Sonola.

Median job recovery rates for major metros differ by region. For instance, the 67% median recovery rate in the Northeast was the highest of the four main regions with the 54% median in the West as the lowest. However, Northeast recovery rates are in danger of reversing course or decelerating given high case counts and the possibility of further coronavirus-related restrictions.

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

Contact:

Olu Sonola, CFA
Senior Director
+1 212 908 0583

Fitch Ratings, Inc.
300 W. 57th St.
New York, NY 10019

Dylan Szeto
Analyst

+1 646 582-4048

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

Additional information is available on www.fitchratings.com

IRS Procedures Revised for Issuing Letter Rulings.

The IRS has published (Rev. Proc. 2021-1, 2021-1 IRB 1) revised procedures for issuing letter rulings, determination letters, and information letters on specified issues. Rev. Proc. 2020-1 is superseded.

1/4/21

TAX - ARKANSAS

City of Little Rock v. Ward

Supreme Court of Arkansas - December 3, 2020 - S.W.3d - 2020 Ark. 399 - 2020 WL 7134991

City and municipal airport commission sought review of county assessor's denial of tax exemption for unleased airport-owned properties that airport purchased as a buffer or used to store historical plane and equipment used for clearing runways during snow and ice events.

The Pulaski County Court ruled in favor of city and commission. Assessor appealed. The Circuit Court granted assessor's motion for summary judgment. City and commission appealed.

The Supreme Court held that:

- Assessor's failure to file answer within 30 days in compliance with rule governing appeals from county court to circuit court was not a jurisdictional error;
- Public-purpose tax exemption applied to unleased property that was used for storage; and
- Public-purpose tax exemption applied to unleased property that airport purchased as a buffer.

County assessor's failure to timely file answer within 30 days in compliance with rule governing appeals from county court to circuit court was a procedural error, not a jurisdictional one, and thus it did not deprive circuit court of jurisdiction over assessor's appeal of county court's determination that unleased real property of municipal airport was exempt from taxation.

Municipal airport's unleased real property located within secure airfield, comprised of an office building and five hangars, was used exclusively for public purposes when it was unleased, and thus property was exempt from taxation under State Constitution during that time, where airport used property to store historical plane owned by airport, to house offices for city police department, and to store and stage equipment such as snow brooms, bulldozers, and trucks used for clearing runways during snow and ice events.

Municipal airport's unleased real property that airport purchased to maintain buffer around airport was used exclusively for public purposes, and thus property was exempt from taxation under State

Constitution; buffer adhered to Federal Aviation Administration (FAA) regulations and furthered aeronautical activities and safety by preventing height enhancements, radio interference, and glares that would have disrupted aeronautical activities of airport.

Munis Set for Seventh Straight Year of Gains Amid Record Supply.

- **State and local debt recovered from historic rout in March**
- **2020 issuance reached $457 billion, driven by taxable sales**

The $3.9 trillion U.S. municipal bond market is on track to finish 2020 with returns of about 5.2%, marking the seventh straight year of gains and showcasing the rebound from a record selloff in March as fears about the pandemic's fiscal fallout rattled investors.

Supply

State and local governments issued about $457 billion of long-term bonds in 2020 — 12.5% more than what was sold in 2019 — with the increase driven by a sharp jump in the sale of taxable bonds, according to data compiled by Bloomberg. This year's supply exceeds the previous record reached in 2016.

Continue reading.

Bloomberg Markets

By Danielle Moran

December 30, 2020, 7:42 AM PST

Opportunity Zone Group Requests Deadline Relief.

SUMMARY BY TAX ANALYSTS

The Novogradac Opportunity Zones Working Group has asked Treasury and the IRS for several forms of relief that focus principally on the postponement of deadlines related to the Opportunity Zone incentive during the COVID-19 pandemic.

FULL TEXT PUBLISHED BY TAX ANALYSTS

December 23, 2020

Office of Associate Chief Counsel (Income Tax and Accounting)
Attention: Erika C. Reigle and Kyle C. Griffin
Internal Revenue Service (IRS)
1111 Constitution Avenue, NW
Washington, D.C. 20224

CC:PA:LPD:PR
(IRS Review of Regulatory Relief)

Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Opportunity Zones Compliance Relief Requested due to Continuing COVID-19 Impact

Dear Ms. Reigle and Mr. Griffin:

The Novogradac Opportunity Zones Working Group (OZ Working Group) is writing to request further relief from certain provisions under Internal Revenue Code (IRC) Section 1400Z-2 and the regulations thereunder due to ongoing and future business impacts of the current COVID-19 pandemic.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) have broad authority under IRC Section 7508A to postpone certain deadlines by reason of Presidentially Declared Disaster. The previously issued IRS Notice 2020-39 extended certain opportunity zones-(OZ-) related deadlines to Dec. 31, 2020. As of the date of this letter, the Presidential Disaster Declarations issues due to the COVID-19 pandemic remain ongoing and are expected to continue into 2021. We believe additional extensions of the relief provided in Notice 2020-39 are within the scope of the agencies' regulatory authority.

The OZ Working Group includes various participants in community development finance: investors, lenders, for-profit and nonprofit developers, community development financial institutions, trade organizations and other related professionals. Our request represents collective input from these stakeholders as to how to make OZ incentive more impactful to low-income communities.

The OZ Working Group appreciates your consideration of issues related to OZ compliance as investors, qualified opportunity fund sponsors, OZ businesses and other organizations struggle with the national impact of COVID-19. We note that the IRS has broad regulatory authority under IRC Section 7508A and robust disaster relief provisions in Rev. Proc. 2018-58. We believe this authority has been triggered by the President's declaration of a national emergency on March 13, 2020, which included his instruction to the Secretary of Treasury to provide relief from tax deadlines under Section 7508A and encouraged requests for a declaration of a major disaster. In response to this declaration, the IRS issued Notice 2020-23 and Notice 2020-39, which extended certain deadlines and provided other relief to taxpayers affected by COVID-19. As we remain under a state of national emergency, we request that the IRS and Treasury further postpone these deadlines and provide other relief related to the OZ incentive.

Notwithstanding the authority the IRS and the Treasury have with respect to disaster relief, the OZ Working Group is requesting the following additional relief:

- IRS Notice 2020-23 provided relief whereby if the last day of a taxpayer's 180-day investment period within which a taxpayer must make an investment into a qualified opportunity fund (QOF) falls on or after April 1, 2020, and before July 15, 2020, were postponed to July 15, 2020. IRS Notice 2020-39 extended this postponement from July 15, 2020, to Dec. 31, 2020. We are requesting that this postponement be extended to June 30, 2021.
- IRS Notice 2020-39 provided relief for QOFs whose last day of the first six-month period of the taxable year or last day of the taxable year falls within the period beginning on April 1, 2020, and ending on Dec. 31, 2020, by waiving penalties for failure of the QOF's 90% investment standard by establishing that the failure is due to reasonable cause under Section 1400Z-2(f)(3). We are

requesting that this relief be extended to any 90% investment standard testing dates occurring through June 30, 2021.
- IRS Notice 2020-39 provided relief for QOFs and qualified OZ businesses by disregarding the period beginning on April 1, 2020, and ending on Dec. 31, 2020, in determining any 30-month substantial improvement period. We are requesting that this disregarded period be extended to June 30, 2021.
- As a result of the federally declared disaster for purposes of IRC Section 165(i)(5)A), all qualified OZ businesses holding working capital assets intended to be covered by the working capital safe harbor before Dec. 31, 2020, receive not more than an additional 24 months to expend the working capital assets of the qualified OZ business, as long as the qualified OZ business otherwise meets the requirements to qualify for the working capital safe harbor. Treasury regulation 1.1400Z2(d)-1(d)(3)(v)(D) provides that a qualified OZ business may receive up to an additional 24 months for a total of 55 months to consume its working capital assets under the working capital safe harbor if the QOZB is located in a qualified opportunity zone within a Federally declared disaster area. We are requesting that the potential additional 24 months to expend working capital assets rule be extended to working capital assets intended to be covered by the working capital safe harbor before June 30, 2021.
- IRS Notice 2020-39 provided relief by extending a QOF's normal 12-month reinvestment period to reinvest the proceeds received by the QOF from the return of capital or the sale or disposition of some or all of the QOF's qualified OZ property to up to an additional 12 months provided that the 12-month period included Jan. 20, 2020, and that the QOF satisfies the requirements of Section 1.1400Z2(f)-1(b)(1) and invests the proceeds in the manner originally intended before Jan. 20, 2020. We are requesting that any QOF's reinvestment period that includes any day that falls within the period beginning Jan. 20, 2020, through Dec. 31, 2020, receives up to an additional 12 months to reinvest and that the period beginning Jan. 20, 2020, through Dec. 31, 2020, is disregarded.
- Provide relief to businesses by confirming that qualified OZ businesses that are forced to rework or dramatically alter their plans for the development of a trade or business and, as a consequence, their written plans and schedules, as a result of the impact of a federally declared disaster, are not considered to fail the working capital safe harbor requirement to use working capital assets in a manner substantially consistent with their written plan and schedule.

As we remain under a state of national emergency, we request that the IRS and Treasury further postpone the above deadlines related to OZs as investors, QOF sponsors, OZ businesses and other organizations struggle to recover from the national impact of COVID-19.

Thank you for your consideration of these requests. Please contact us if you have any comments or questions regarding the matters discussed above.

Very truly yours,

By Michael J. Novogradac, Managing Partner

John S. Sciarretti, Partner

Novogradac & Company LLP
Dover, OH

CC:
Michael Novey, Office of Tax Policy, Treasury
Julie Hanlon-Bolton, ITA, IRS
Scott Dinwiddie, Associate Chief Counsel

[This Part of the Muni Sector is Surging.]

Munis have long been very popular with HNW clients because of their tax exempt income. However, a new—and slightly confusing—part of the industry is increasingly becoming popular. That new niche is taxable muni bonds. According to Barron's "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". Many think the new vaccines will give a boost to munis, which have suffered under COVID.

Nasdaq

DEC 29, 2020

[The Long Strange Trip Of The Muni Market In 2020.]

Summary

- The bond fund outflows of March followed the downdraft in oil prices caused by the onset of the pandemic, which caused the sharp sell-off in the stock market.
- The rebound at the end of March was one of the most vigorous muni rallies ever witnessed.
- Muni yields across the board are significantly lower than they were at the start of the year, and in the short end they are MUCH LOWER.

Continue reading.

Seeking Alpha

Dec. 30, 2020

[California Treasurer Launches Interactive Public Finance Guide.]

California Treasurer Fiona Ma's office has gone virtual with the California Debt Financing Guide, making it easier for public finance professionals to find information they need.

Ma announced the release of a new interactive software version of the guide Wednesday, which up until now had only been available as a static PDF document. It's available at www.debtguide.treasurer.ca.gov.

"The new interactive application responds to the needs of present-day finance officers, many of whom require quick answers to complex questions," Ma said.

California has more than 4,400 units of government that tap the muni market to fund projects and look to the guide for answers to questions on how to issue bonds.

The app was developed by the California Debt and Investment Advisory Commission (CDIAC), which

Treasurer Ma chairs. CDIAC provides educational resources to public finance professionals in California.

Robert Berry, CDIAC's executive director, told the Bond Buyer when he was named head of the commission early this year that this project was on his short list of goals.

"This version of the Debt Guide enables users to easily search for public finance terms and concepts and then save their personal notes and bookmarks for future use," Berry said in a statement.

The Debt Guide is the 2020 update to CDIAC's flagship resource, the California Debt Issuance Primer.

As designed, the app enables users to create an account to highlight sections, save notes and bookmark sections for future use. In addition, the application can be accessed and viewed on any personal device. The app also has a legal references appendix.

"One of the most important aspects of the Debt Guide app is that it can be accessed on any device, a shortcut to the application can be saved to the home screen of your phone, tablet, or computer and easily accessed when needed," Berry said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 12/24/20 01:43 PM EST

Orrick Webinar: 2020 Update on the Low Income Housing Tax Credit

Recorded December.23.2020 | December.28.2020

One of the highlights of the recently passed COVID Relief Legislation bill is the permanent minimum 4% Low Income Housing Tax Credit rate. Orrick and guest panelists discuss this new legislation and its effect on affordable housing projects. Topics addressed include:

- Which buildings are covered by the new law
- How the effective date will apply to draw down deals
- The issue date of the "obligation" vs the issue
- The interaction between the permanent rate and the 50%

Watch the webinar.

Where to Find Yield While Limiting Risk in the 2021 Bond Market.

Fixed income strategists offer their outlooks and recommendations.

The performance of the U.S. fixed income market in 2021, like most financial markets, will depend largely on the extent of the economic recovery, which in turn, depends on the trajectory of the coronavirus pandemic and the distribution and uptake of vaccines that can stem its spread.

The Federal Reserve said as much in its latest policy statement: "The path of the economy will

depend significantly on the course of the virus. The ongoing public health crisis will continue to weigh on economic activity, employment, and inflation in the near term, and poses considerable risks to the economic outlook over the medium term."
In the meantime, long-term rates have been rising almost steadily higher since Pfizer first announced on on Nov. 9 that its COVID-19 vaccine was 90% effective — a number it soon raised to 95% — followed by the first vaccinations on Dec. 8 in the U.K. and Dec. 14 in the U.S.

The 10-year Treasury note was yielding 0.92% as of Dec. 25, and U.S. bond strategists expect even higher rates by year-end 2021, at or slightly above 1.5% if the recovery gathers steam.
"It will be a big move if we get to 1.6%," but not much of a surprise if the economy is growing and inflation is rising, said Kathy Jones, chief fixed income strategist at the Schwab Center for Financial Research, in an outlook webinar. Most economists expect growth will pick up in the second half of the year but not return to pre-pandemic levels for at least a year.

Short-term rates are another story. The Fed has indicated it won't raise them from their current 0-0.25% range before 2023 and has pledged to maintain that range until the economy has achieved maximum employment with inflation averaging 2% and inflation expectations "well anchored at 2%." Inflation, based on the Personal Consumption Expenditure Deflator, the Fed's favorite indicator, was up only 1.5% in November compared with a year ago.

"Finding long-term returns will be more difficult now than it was in the last decade," said David Kelly, chief global strategist at J.P. Morgan Asset Management.

Given this backdrop of potentially moderately higher long-term yields, unchanged short-term rates and an economic recovery that's vulnerable to flare-ups of the virus, more contagious strains and vaccine distribution issues, bond strategists caution investors to expect middling returns for fixed income assets in 2021.

For example, John Flahive, head of fixed income investments for BNY Mellon Wealth Management, expects the AGG — the aggregate index of investment-grade government securities, mortgage and asset-backed and corporate bonds — will return less than 3%, compared with 7% this year.

For those investors searching for yield, many strategists are recommending moving down the credit rating scale but not below B and being selective about individual issues.

"Avoid the lowest credit quality in the corporate sector," Jones said, noting that even though a lot of companies managed to refinance their debt, they don't see a strong future for earnings or cash flow. And CCC-rated bonds "don't have a lot of upside."

"The BB-rated index has a yield around 5%, and we expect default rates have already peaked," wrote BlackRock's chief investment officer of global fixed income, Rick Rieder, in his 2021 outlook.

Elaine Stokes, portfolio manager at Loomis, Sayles & Co. expects the spread between high-yield bonds and Treasurys of comparable maturities to narrow to about 300-325 basis points from their current level, which is slightly above 400 basis points, according to the St. Louis Fed.

Despite expectations for narrower spreads in 2021, many strategists advise investors to be selective in their bond choices.

"Know what you're buying," cautioned John Queen, a fixed income portfolio manager at Capital Group. Referring to the corporate, mortgage-backed and municipal bond market, he said, "There are still opportunities, but they need to be assessed security by security, issuer by issuer and active management will play an important role."

For muni bonds, Queen stressed the importance of knowing which states will continue to do well despite the pandemic and which will experience credit deterioration. More federal aid for state and local governments would help, but that possibility remains unfulfilled.

Emerging market bonds is another fixed income asset category that strategists like for 2021 because of expectations for global economic recovery and a weakening U.S. dollar. “Emerging markets, especially Asia, have proven surprisingly resilient during the COVID crisis and could do especially well in a world of ample U.S. dollar liquidity, rebounding global growth, a weaker U.S. dollar and compressing yield/risk premiums,” Rieder wrote.

ThinkAdvisor

Bernice Napach By Bernice Napach | December 28, 2020 at 01:18 PM

New MI Drain Code Amendments Signed into Law.

On Dec. 29, Governor Whitmer signed two Drain Code amendments into law—House Bills 5126 and 5504, now Public Acts 281 and 291, respectively. Public Act 281 does not go into effect until March 29, 2021, however Public Act 291 is effective immediately. Below are summaries of the more significant revisions to the Drain Code:

Public Act 281 (House Bill 5126, Effective March 29, 2021)

Public Act 281 amends Section 135 to allow a county drainage district or intercounty drain drainage district be extended into a new county by a petition signed by five freeholders or a municipality (previously a petition under Section 135 could only be brought by 50% or more of the landowners affected by the drain or the proposed drain). A petition under Section 135 can now be combined with a petition under Section 192 (maintenance and improvement of an intercounty drain).

Public Act 281 also amends Section 154 to separate the notice of letting (advertisement for bids) and the notice of the day of review of apportionments. The notice of letting must only be posted on the drain commissioner or county’s website at least 10 days before the bid letting. The notice for the day of review must now be published only once (instead of twice), mailed to property owners, and served (by personal service or certified mail) on the county clerk, a member of the road commission, township supervisors, and city and village clerks at least 10 days before the day of review. The notice for the day of review must now also include all of the following:

- A statement describing how comments on the apportionment of benefits may be submitted and how they will be considered;
- For notices mailed to property owners, the estimated percentage and dollar amount apportioned to that person’s land, the estimated annual dollar amount apportioned to that person’s land, and the estimated project assessment duration. A drain commissioner or drainage board may adjust any of these without notice or an additional meeting to review apportionments;
- The name or number of the drain;

The address of the drain commissioner or county’s website, as applicable, and that the following information will be available on that site:

– A description of the drainage district or a map depicting the drainage district;
– The number and length of sections, average depth and width of each section, and if the drain will

be a closed drain, the amount and specifications of all tile or pipe required;
-The location, number, type, and size of all culverts and bridges;
-The conditions upon which the contract will be awarded.

The full text of Public Act 281 is available here.

Public Act 291 (House Bill 5504, Effective Immediately)

Public Act 291 amends various sections of the Drain Code as summarized below:

- Section 31: Requires a drain commissioner to make a list each year by Nov. 1 of the drainage districts that are assessed for maintenance. The list must include the drain name and the amount assessed annually. The list must be posted on the drain commissioner or county's website.
- Section 196: Adds legal fees into the enumerated costs that are excluded from costs of 'maintenance and repair.'
- Section 196: Clarifies that the costs associated with the inspection, maintenance, and repair of a drain can be financed and assessed for up to 10 years.
- Section 196: Prohibits a drain commissioner or drainage board from levying an additional maintenance assessment if a previous maintenance assessment is ongoing, unless an emergency is declared by the drain commissioner or drainage board, or if the additional expenditure is approved by each municipality that is affected by more than 20% of the cost.
- Section 221: Requires a drain commissioner or drainage board publicly bid all petitioned projects under Chapters 4, 6, and 8.
- Section 221: Requires a drain commissioner or drainage board publicly bid maintenance projects under Section 196 unless the work is performed by (1) county staff; or (2) a prequalified contractor. A drain commissioner or drainage board must maintain a list of all prequalified contractors. The list and the criteria adopted by the drain commissioner or drainage board must be posted on the drain commissioner or county's website.
- Section 434: Increases the principal threshold of borrowing subject to the Municipal Finance Act. Previously, if a borrowing was greater than $300,000, it was subject to the Municipal Finance Act. Under Public Act 291 the Municipal Finance Act applies for borrowings greater than $600,000.

The full text of Public Act 291 is available here.

December 31, 2020

Applications Open for GFOA Executive Board.

GFOA's Executive Board Nominating Committee is seeking candidates to fill five at-large positions and the position of president-elect for GFOA. All candidates must be active GFOA members and would serve three-year terms beginning in June 2021. Please apply online using the link below by February 5, 2021.

APPLY

MSRB Soliciting Applications for Four Positions On Its Governing Board.

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

Learn more about the application process and how Board members set regulatory policy, authorize rulemaking, and oversee market transparency systems and operations.

- SEC Does Not Plan to Extend TCE.
- SIFMA US Negative Interest Rates Policy Checklist.
- SIFMA Expects Long Term Municipal Issuance to Reach $452 Billion in 2021.
- Bloomington Firm Faces SEC Penalties Over Municipal Debt Practices.
- Wall Street Muni Desks End Record Year With New Deal Deep Freeze.
- And finally, Just Never Got Around To Finalizing The Paperwork is brought to us this week by *Caton v. City of Pelham*, in which the Supreme Court of Alabama begins its opinion thusly, "Caton began a career as a police officer with the City of Birmingham in 1990. In approximately 2001, he was hired as a police officer by the City." You will surely agree that this raises more than a few questions. In particular, HOW IN THE NAME OF ALL THAT IS HOLY, DO YOU BEGIN A "CAREER" AND ONLY ACTUALLY GET HIRED ELEVEN YEARS LATER? I do believe, however, that we could all use some advice from Mr. Caton on spouse-placation. Dude's clearly a Jedi or something.

PUBLIC EMPLOYMENT - ALABAMA

Caton v. City of Pelham

Supreme Court of Alabama - December 11, 2020 - So.3d - 2020 WL 7326399

Terminated city employee, who had worked as a police officer and later as a firefighter and who allegedly had suffered injuries at work, brought action against city based on claim of retaliatory discharge in violation of workers' compensation statutes.

The Circuit Court entered summary judgment for city after setting aside an initial summary judgment for city. Terminated city employee appealed.

The Supreme Court held that:

- Trial court did not abuse its discretion when it granted terminated city employee's motion, made pursuant to rule on relief from judgment due to mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, or any other reason justifying relief, to set aside first summary judgment for city;
- Determination in unemployment-compensation proceedings that city employee had been terminated for misconduct collaterally estopped him from maintaining retaliatory-termination claim; and
- As matter of apparent first impression, use of determination in unemployment-compensation proceedings that city employee had been terminated for misconduct to find that he was collaterally estopped from maintaining retaliatory-termination claim did not violate his right to trial by jury on his retaliatory-termination claim.

BALLOT INITIATIVE - ARKANSAS

Kimbrell v. Thurston

Supreme Court of Arkansas - December 3, 2020 - S.W.3d - 2020 Ark. 392 - 2020 WL 7136101

Voter brought action for writ of mandamus and declaratory and injunctive relief, challenging sufficiency of ballot titles of constitutional amendments that General Assembly proposed concerning term limits and process for submitting, challenging, and approving proposed initiated acts, constitutional amendments, and referenda.

The Circuit Court dismissed. Voter appealed.

The Supreme Court held that:

- Voter's appeal was moot, and
- No mootness exceptions applied.

Voter's appeal of dismissal of complaint seeking mandamus, declaratory, and injunctive relief as to allegedly insufficient ballot titles on constitutional amendments proposed by General Assembly was moot, where deadlines for both the election and certification of election results had occurred, voter did not request in his motion to expedite that his appeal be addressed before certification deadline, voter did not lodge appeal with Supreme Court until six days after election, and voter failed to seek a stay of certification from either the circuit court or Supreme Court.

Exception to mootness doctrine for issues that were capable of repetition yet evading review did not apply to allow Supreme Court to review moot appeal of dismissal of voter's action seeking mandamus, declaratory, and injunctive relief as to allegedly insufficient ballot titles on constitutional amendments proposed by General Assembly, where Court addressed the nearly identical issue presented in case in another case, and Court's opinion in other case was handed down before election.

Exception to mootness doctrine for issues raising considerations of substantial public interest which, if addressed, would prevent future litigation did not apply to allow Supreme Court to review moot appeal of dismissal of voter's action seeking mandamus, declaratory, and injunctive relief as to allegedly insufficient ballot titles on constitutional amendments proposed by General Assembly, where Court addressed and rejected the nearly identical issues presented in case in another case that Court handed down before election.

ANNEXATION - INDIANA

Holcomb v. City of Bloomington

Supreme Court of Indiana - December 15, 2020 - N.E.3d - 2020 WL 7349155

City brought declaratory judgment action against Governor, challenging statute that stopped city's proposed annexation of several areas of land and prohibiting city from trying to annex the areas for five years.

The Circuit Court entered summary judgment in favor of city. Governor appealed.

The Supreme Court held that:

- Statute stopping city's annexation vested enforcement authority in Governor, and thus Governor

was proper defendant;
- Prudential concerns did not render case nonjusticiable; and
- Statute was a special law when a general law could have been made, rendering it unconstitutional.

Statute stopping city's proposed annexation of several areas of land and prohibiting city from trying to annex the areas for five years vested enforcement authority in Governor, and thus Governor was proper defendant in city's declaratory judgment action challenging statute; annexation statutes primarily impacted public, rather than private relations, statute at issue did not require challengers to use remonstrance process to challenge annexation, as was generally required to enforce annexation laws, and was incompatible with remonstrance procedure, annexation statutes impacted citizens' relationship to municipal bodies that were subdivisions of the state, and Governor was the constitutional officer vested with executive power of the state, giving him an interest in the relationships between public and state's subdivisions.

Prudential concerns with regard to Governor being named defendant in city's challenge to statute stopping city's proposed annexation of several areas of land and prohibiting city from trying to annex the areas for five years did not render case nonjusticiable, but rather, compelled court to reach the merits; requiring city to sue different defendant would have resulted in substantial delay and cost to taxpayers, but court would ultimately have reached same result on underlying question, there was no other defendant for city to sue unless city first expressly violated statute, and separation of powers principles compelled court to check an unconstitutional action of other branches of government.

Speed of city's attempted annexation of areas of land, opposition to the annexation, and city's drawing of annexation boundaries to cover areas with existing remonstration waivers in order to minimize opposition to annexation were not unique circumstances of city's proposed annexation that warranted special treatment that precluded legislature from making a general law applicable to city, and thus statute stopping city's proposed annexation and prohibiting city from trying to annex the areas for five years was unconstitutional special legislation; 133 days for city to complete annexation process was within the statutory time frame for annexations, which allowed them to take place in 120 days, landowners commonly opposed annexations and did not shy away from using statutory remonstrance process to challenge them, and remonstrance waivers were commonly discussed and incorporated into determining which areas were suitable for annexation.

ANNEXATION - MISSISSIPPI

Pendorff Community Association, LLC v. City of Laurel

Supreme Court of Mississippi - September 24, 2020 - 302 So.3d 1208

After city enacted ordinance annexing four parcels of real property, neighboring city contested the annexation of one part of one parcel and community association entered an appearance to contest the annexation of that entire parcel.

After annexing city stipulated to exclude the part contested by neighboring city, the Chancery Court entered judgment after a bench trial approving the annexation. Community association appealed.

The Supreme Court held that:

- Sufficient evidence supported chancellor's finding that city's internal growth favored annexation;
- Sufficient evidence supported chancellor's finding that city's population increase favored

annexation;
- Sufficient evidence supported chancellor’s finding that city’s need for developable land favored annexation;
- Sufficient evidence supported chancellor’s finding that increased traffic counts favored annexation;
- Sufficient evidence supported chancellor’s finding that city’s sales tax revenue history favored annexation;
- Sufficient evidence supported chancellor’s finding that city’s plans for implementing and fiscally carrying out the proposed annexation favored annexation; and
- Sufficient evidence supported chancellor’s finding that city’s bonding capacity favored annexation.

Sufficient evidence supported chancellor’s finding that city’s internal growth, as subfactor of the “need to expand” factor relevant to determining the reasonableness of a municipal annexation, favored approval of city’s proposed annexation of certain real property; over a 13-year period preceding the annexation, city issued 295 new single-family residential-unit permits, 170 new multifamily residential-unit permits, 152 new commercial permits, and almost 10,500 other permits for a combined total value of $359 million, and expert witness for community association that opposed the annexation agreed that those numbers reflected a component of internal growth.

Sufficient evidence supported chancellor’s finding that city’s population increase, as subfactor of the “need to expand” factor relevant to determining the reasonableness of a municipal annexation, favored approval of city’s proposed annexation of certain real property; though city’s population had previously experienced a period of decline, in more recent years it had increased again, and city’s expert witness testified that city had a dense population, with 1,142 people per square mile.

Sufficient evidence supported chancellor’s finding that city’s need for developable land, as subfactor of the “need to expand” factor relevant to determining the reasonableness of a municipal annexation, favored approval of city’s proposed annexation of certain real property; only 7.7% of city’s land was vacant and unconstrained, proposed annexation would increase city’s vacant and unconstrained land by almost 30 percent, and expert witness for community association that opposed the annexation testified that he could not identify a city in the state with less vacant and developable land.

Sufficient evidence supported chancellor’s finding that increased traffic counts within the area that city proposed to annex, as subfactor of the “need to expand” factor relevant to determining the reasonableness of a municipal annexation, favored approval of the proposed annexation; though city’s expert witness provided no reason for the increased traffic counts within the proposed annexation area, it was undisputed that traffic counts were increasing.

Sufficient evidence supported chancellor’s finding that city’s sales tax revenue history indicated that city had a reasonable financial ability to provide municipal services to real property it proposed to annex, as factor relevant to determining whether the proposed annexation was reasonable; though city’s sales tax receipts had fluctuated, its receipts were trending upward, and expert witness testified that city’s receipts for most recent year would exceed the amount budgeted by the city.

Sufficient evidence supported chancellor’s finding that city’s plans for implementing and fiscally carrying out its proposed annexation of real property indicated that city had a reasonable financial ability to provide municipal services to the property it proposed to annex, as factor relevant to determining whether the proposed annexation was reasonable; city undertook extensive planning, including with respect to water and sewer improvements, which was the only area about which community association that opposed the annexation complained.

Sufficient evidence supported chancellor’s finding that city’s bonding capacity indicated that city had a reasonable financial ability to provide municipal services to real property it proposed to annex, as factor relevant to determining whether the proposed annexation was reasonable; expert witness testified that city had more than $5.6 million in bonding capacity, more than 18 years of clean audits, and an A-plus rating from rating agency.

PUBLIC UTILITIES - OHIO

In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.

Supreme Court of Ohio - December 9, 2020 - N.E.3d - 2020 WL 7233638 - 2020 -Ohio- 5583

Customer who purchased water, sewer, and electric services from a submetering company sought judicial review of a decision of the Public Utilities Commission concluding that the Commission lacked jurisdiction.

The Supreme Court held that test used by Commission improperly deviated from the relevant statutory language, abrogating *In re the Commission's Investigation of Submetering in the State of Ohio*, 2016 WL 11541704, and *In re the Commission's Investigation of Submetering in the State of Ohio*, 2017 WL 4484334.

Modified version of a test applied by the Public Utilities Commission to determine whether it had jurisdiction over claims asserted by a customer against a company that provided submetering services, from which the customer purchased water, sewer, and electric services, improperly deviated from the statute describing the companies subject to the Commission's jurisdiction; the test went beyond considerations of whether the utility-resale activities of the company were ancillary to another business, focusing on how much profit the reseller made and whether a consumer was charged more than she would have been under default-service-tariff rates, which was an inquiry that had nothing to do with the statutory language; abrogating *In re the Commission's Investigation of Submetering in the State of Ohio*, 2016 WL 11541704, and *In re the Commission's Investigation of Submetering in the State of Ohio*, 2017 WL 4484334.

MUNICIPAL CORPORATIONS - OHIO

City of Centerville v. Knab

Supreme Court of Ohio - November 12, 2020 - N.E.3d - 2020 WL 6605846 - 2020 -Ohio- 5219

Defendant was convicted in the Municipal Court of making a false report to law enforcement, arising out of incident in which defendant falsely reported active shooter situation to city police department.

Defendant appealed convictions and sentence, which included restitution order.

The Court of Appeals affirmed convictions but vacated restitution order. City appealed.

The Supreme Court held that a municipal corporation cannot be a "person" against whom a criminal offense or delinquent act is committed and thus does not qualify as a "victim" which could receive an award of restitution, under constitutional amendment expanding rights of crime victims, or Marsy's Law.

EMINENT DOMAIN - VIRGINIA

Johnson v. City of Suffolk

Supreme Court of Virginia - December 10, 2020 - S.E.2d - 2020 WL 7251969

Lessees of oyster grounds brought inverse condemnation action against city and sanitation district, seeking declaratory judgment and alleging that discharges from a sewer system operated by city and district polluted the waters in which lessees raised their oysters.

The Circuit Court granted defendants' demurrers. Lessees appealed.

The Supreme Court held that alleged discharge of pollutants by city and sanitation district did not affect a property interest of lessees and thus could not support an inverse condemnation claim.

Alleged discharge of pollutants by city and sanitation district did not affect a property interest of lessees of oyster grounds and thus could not support an inverse condemnation claim by lessees, who asserted that pollution of water had prevented lessees from properly harvesting oysters; discharge did not interfere with lessees' rights to be on the leased lands, city and district did not remove or physically destroy the oysters, and nothing in leases conferred or presupposed a right to grow oysters in conditions free of pollution or guaranteed a lessee a commercially-viable oyster lease.

Fitch Ratings Updates USPF Variable-Rate Demand Obligations and Commercial Paper Criteria.

Fitch Ratings-New York-23 December 2020: Fitch Ratings has updated its "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria." This report updates the report of the same name published on Jan. 10, 2020.

The key elements of Fitch's external liquidity rating criteria remain consistent with those of its prior criteria report. Fitch does not expect to take any rating actions as a result of the updated criteria.

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

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

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

Fitch Ratings-New York-22 December 2020: Fitch Ratings has published an updated criteria report titled "U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Rating Criteria." The report replaces the prior report of the same title published on Jan. 18, 2019.

No changes to Fitch's underlying methodology were made, and the updated criteria are not expected to result in changes to the ratings of existing transactions.

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

Contact:
Mikiyon Alexander
Senior Director
+1-646-582-4796
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Kasia Reed
Director
+1-646-582-4864

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

Additional information is available on www.fitchratings.com

Why the Surge in Taxable Municipal Bonds?

Municipal bonds – debt issued by state and local governments and some nonprofit institutions – are attractive to investors because the interest is generally exempt from federal income taxes. As a result, investors are willing to accept a lower interest rate than they would otherwise demand, and the issuers get lower borrowing costs. But recently, there has been a surge in issuance of *taxable* municipal bonds—that is, bonds whose interest is taxable to investors. Between January and November of 2020, $129.3 billion in taxable bonds were issued (31% of all municipal bonds issued over this period), up from $67.3 billion in 2019 and $25.1 billion in 2018. Here we explain the tax treatment of municipal bonds and explore what's behind the recent surge in taxable municipal bonds.

WHAT DETERMINES WHETHER INTEREST ON A BOND IS TAXABLE?

The interest on bonds issued by state and local governments is generally tax-exempt at the federal level, unless more than 10% of the proceeds are used for trade or business activities by nongovernmental entities, including leasing a public building to a private entity for business use. And nonprofits with 501(c)3 status, including colleges and hospitals, can issue tax-exempt bonds provided that no more than 5% of the proceeds are used for private business unrelated to the nonprofit's charitable purposes. Regardless of whether the bond is taxed at the federal level, states independently determine whether they tax municipal bond interest. A 2008 Supreme Court ruling cleared the way for states and localities to exempt their own municipal bonds' interest from their own taxes while taxing interest from other state and localities' municipal bonds.

Continue reading.

The Brookings Institution

by Lorena Hernandez Barcena and David Wessel

Monday, December 21, 2020

Lowest Muni Bond Yields Aided Covid-19 Recovery.

State and local governments can reap the benefits just when they need money most.

When the coronavirus pandemic struck the U.S. in early March, among the first reported casualties was the $3.9 trillion market for states and local governments.

The yield on municipal debt sold by almost 2,000 borrowers with more than 55,000 outstanding securities hovered at 1.14%, the lowest since at least 1979, when the Bloomberg Barclays U.S. Municipal Index began compiling data. But panic suddenly seized investors, and prices suffered their biggest weekly decline in 33 years, with insurers MBIA Inc. and Assured Guaranty losing more than a quarter of their value.

"This is the worst that I have seen in terms of market reaction and illiquidity in my career," Christopher Brigati, head of municipal trading at Advisors Asset Management Inc., told Bloomberg News. "It's not unlike the 2008-09 financial crisis, but worse."

That was then. During the ensuing nine months, Congress struggled to provide a second relief package amid resurgent Covid-19 cases and deaths. This was partly because President Donald Trump and Republican senators resisted giving money to the most populous Democratic-led states, such as California, Colorado, Illinois, New Jersey and New York, which they assailed as mismanaged. These governments still arranged the most tax-exempt financing in 10 years at a cost that was the lowest in at least four decades.

No doubt the bonanza for governors, mayors and bondholders during the worsening national peril was made possible by the Federal Reserve lowering its benchmark interest rate barely above zero and the Fed's Municipal Liquidity Facility (MLF), which was set up in the pandemic as a backstop to immediate municipal borrowing. Investors stampeded back into the market, pushing the borrowing cost to 1.08%, the record low.

Anyone in a 28% tax bracket who purchased municipal bonds on March 23 when the yield on the Bloomberg Barclays municipal index surged to 3.53% has a tax equivalent total return (income plus appreciation) of 19.1%. That's because the market remains close to the record-low yield of 1.08% it hit on Dec. 21. Investors who snapped up bonds sold by Illinois and New Jersey have equivalent total returns of 24.6% and 22.2%, respectively, according to data compiled by Bloomberg. A basket of all types of U.S. debt returned just 6% when benchmark U.S. Treasuries were little changed.

Recent history suggests states and local governments, with or without federal assistance, will reap the benefits of low yields at the moment when they need money most. The relative borrowing cost for Illinois, which, at $137 billion, has among the worst levels of unfunded pension liabilities in the nation, narrowed to 50 basis points at the beginning of the year compared with the rest of the U.S., continuing a decade-long trend of historically low-cost financing. The spread has since narrowed to a level that is 10 basis points below the five-year average.

Even during the March turmoil, Illinois was poised to borrow well below the 4.78% it was forced to pay in 2008. It now has 17,000 outstanding municipal securities totaling $82 billion with an average coupon of 4.3% that can be called, or refinanced, at lower rates.

Sure enough, Chicago's O'Hare International Airport in September sold $1.2 billion of revenue bonds maturing in 2039, yielding 1.9% currently. New Jersey State Transportation Trust last month sold $1.5 billion of revenue bonds due in 2050 and yielding 3%. Proceeds from the sale will be used to fund various transportation improvements. Denver City & County Airport sold $629 million of securities maturing in 2035, yielding 2.6%. Proceeds will be used refinance existing debt at lower rates.

All told, states and local governments this year will match or exceed the decade-high $478 billion of new offerings in 2016. That's because the appetite for tax-exempt securities shows no signs of abating when the yield on municipal debt remains relatively high.

The largest exchange-traded fund investing in municipal bonds, iShares National Muni Bond ETF, issued almost 170 million shares, a record since its inception in 2007. During the second quarter, when yields plummeted from the Covid-19 peak, more than $1.5 billion flowed into fund.

To be sure, some of the market's incentives are about to go away if the Trump administration gets its way. Treasury Secretary Steven Mnuchin's decision to end the Fed's MLF — approved earlier this year under the federal CARES Act — could increase risks for many borrowers.

"New Jersey knows this better than most," Elizabeth Maher Muoio, the state's treasurer, wrote earlier this month. "On the same day that Secretary Mnuchin announced his refusal to extend the deadline for this emergency lending program," the state sold general obligation bonds yielding less than 1.95% and providing $4.28 billion of proceeds. "While we ultimately did not need to use the MLF, the facility's presence served to stabilize the municipal market in the months leading up to New Jersey's bond sale, allowing us to obtain the extremely favorable rates we received."

Bloomberg Markets

By Matthew A. Winkler

December 22, 2020, 2:00 AM PST

[SIFMA US Negative Interest Rates Policy Checklist.]

The [U.S. Negative Interest Rates Policy Checklist] describes how certain capital markets products may be impacted in the event of a U.S. negative interest rate policy, followed by a checklist of considerations that can be used by firms seeking to mobilize negative interest readiness programs within their institutions. The checklist, published by SIFMA and EY, is structured across the following key themes: U.S. negative interest rate program governance and mobilization; financial exposure analysis; contract and counterparty customer analysis; portfolio strategies and profitability; technology and operations; finance, tax and accounting; and regulatory and policy considerations.

Wall Street Muni Desks End Record Year With New Deal Deep Freeze.

- **Volume of offerings in pipeline plunges to 8-year low**
- **Lull may help prices as debt payments fuel reinvestment demand**

On Wall Street, municipal-bond underwriters are winding down a record-setting year on a quiet note.

The volume of new debt offerings scheduled for the next 30 days has dwindled to just $2.29 billion, an amount that's smaller than even the single bond issue floated by New Jersey last month. It marks the smallest calendar since December 2012, signaling that the market is effectively going into hibernation until new deals start popping up in January.

The slowdown comes after a big year for bond sales, with long-term issuance increasing about 12% to $457 billion in 2020, exceeding the previous record hit in 2016, according to data compiled by Bloomberg. The surge was driven heavily by refinancing as states and cities rushed to capture savings offered by low interest rates, with much of that coming ahead of the presidential election in case the outcome upset financial markets.

The gauge of upcoming sales captures only a fraction of what will likely be sold because many deals are done on shorter notice.

The drop-off is likely to continue into January, which may help to prop up prices. The month typically sees light bond sales as investors receive a wave of debt payments that they can reinvest.

"We will soon enter one of the strongest periods of technical strength for munis in any calendar year," Nuveen said in a note last week.

Bloomberg Markets

By Amanda Albright

December 21, 2020, 10:32 AM PST

— With assistance by Joseph Mysak Jr

SEC Does Not Plan to Extend TCE.

Major Advocacy Win for BDA

Following an extensive advocacy campaign, which included nearly a dozen meetings and multiple letters in opposition, the BDA has today learned that the SEC **does not plan to extend the Temporary Conditional Exemption for MA's.**

In a letter to Representative French Hill (R-AR), SEC Chair Jay Clayton, while explaining the reasoning for the original implementation of the Order stated, *"At this time, I do not expect the Commission to extend this temporary relief."*

The letter can be viewed here.

The response comes after the Congressman, working with the BDA, wrote the Commission in opposition of the TCE and questioned the Chairman during a recent House Financial Services Committee Hearing.

****All BDA Advocacy Against Exemption Can be Viewed Here**

Since learning of the initial PFM letter and the follow-up letter from NAMA to the SEC, the BDA has made this our top priority and taken many steps in order to combat the misinformation represented. BDA conducted more in-person meetings and filed more letters to the SEC than any other group.

The result was exemptive relief that was dramatically pared back from the SEC's original proposal in October 2019 and one that remained temporary.

Bond Dealers of America

December 22, 2020

End Nears for Fed's Municipal Lending Program.

The initiative only attracted two borrowers, but experts say it helped to stabilize the municipal bond market following Covid-driven turmoil earlier this year.

The emergency lending program the Federal Reserve launched earlier this year to support short-term borrowing by state and local governments will officially close at the end of this month, and language inserted into the massive spending and coronavirus relief package Congress just passed would ensure that lawmakers will have to give their blessing for it to be revived again.

Back around the time the Municipal Liquidity Facility was announced in early April, the coronavirus outbreak had badly shaken the municipal bond market, with investors pulling out billions of dollars and interest rates soaring. Today, experts say the program played a key role in easing this market turmoil and ensuring that states and localities could go on accessing credit.

"I think it was incredibly important and I think it did help restore confidence in the market among lenders," said Matt Fabian, a partner at Municipal Market Analytics.

The facility's shutdown is a significant shift, he said. This is because while the municipal bond market is generally doing fine now, there is still a great deal of uncertainty among investors and other state and local government stakeholders about the extent of the financial fallout from the virus. It remains to be seen how bad credit downgrades could be next year and how long the budget strain many state and local governments are now under is going to last.

"Without the MLF, we're just less secure," Fabian said. "Hopefully we don't have a shock to the market. In the best case we don't. But if we do, we're just less well prepared now."

The focus of the Fed facility was not long-term bonds, like those used to finance infrastructure, but rather shorter-term "notes" governments depend on to maintain liquidity and pay their bills.

With the Fed facility, the maximum length states and local governments could borrow was three years. States and mainly larger localities were eligible for the program—counties with over 500,000 residents and cities with over 250,000. The lending facility was scheduled to expire on Dec. 31. The new spending and relief package passed by Congress this week and sent to President Trump ensures this will be the case, for now at least.

After suggesting he could veto the package, Trump signed the measure into law on Sunday.

Pennsylvania Sen. Pat Toomey, a Republican, was a leading advocate for embedding language into the legislation to end the municipal lending program, along with other emergency lending initiatives established by the Federal Reserve. The programs were funded by the CARES Act, the large coronavirus aid measure that lawmakers approved in late March.

Toomey has argued that the Fed programs were important during the earlier days of the coronavirus crisis and were effective in preventing financial markets from seizing up. But he has also emphasized that they were designed to lapse at the end of the year and that they don't need to continue now that they've achieved their initial purpose.

"The purpose was to ensure that creditworthy borrowers could access credit through the normal channels," he said during floor remarks over the weekend. "They worked amazingly well."

Toomey said Democratic proposals raising the possibility of continuing, or eventually reviving, the programs are part of his motivation for wanting to make clear—in law—that the initiatives should be closed. He noted that legislation House Democrats passed earlier this year called for the Fed to offer states and localities longer-term loans, up to 10 years, at low interest rates.

"The Fed wouldn't be playing its role, its traditional role, as the lender of last resort in a financial crisis," he said. "It'd be the lender of first resort."

The Municipal Liquidity Facility became operational on May 26 and borrowers who wanted to participate in the program had to notify the Fed by the start of December—no later than 30 days prior to the scheduled Dec. 31 termination date for the program—to tap it.

During that roughly six month window, two borrowers emerged—the financially troubled state of Illinois and New York's Metropolitan Transportation Authority, an agency that had already been dealing with budget problems in recent years and is now getting slammed by a steep drop in fare revenue brought on by the pandemic.

Fabian said the fact that so few issuers used the program is a sign of its success. It helped keep the municipal bond market functioning and diminished the chances major local governments would default on their financial obligations. Meanwhile, the interest rates the Fed adopted set guideposts, during an uncertain time, for where municipal borrowing costs should be.

"It was an insurance policy," Fabian said. "It was a backstop."

Illinois first turned to the facility in June. The MLF purchased a $1.2 billion one-year general obligation note from the state, with an interest rate of 3.36%. That rate is lower than what Illinois paid for notes it sold on the open market in May, but higher than the cost of a pre-pandemic short-term debt sale in late 2019, a Congressional Oversight Commission report explains.

Last week, the state closed on another $2 billion borrowing through the facility, according to The Bond Buyer. Illinois Comptroller Susana Mendoza said last month that her office would use federal matching dollars to “turn the $2 billion into $3 billion” and to pay down health care-related bills and avoid late-payment interest penalties.

The Municipal Liquidity Facility also purchased a roughly $450 million three-year revenue note with an interest rate of 1.93% from the New York MTA in August. The MTA borrowed again from the facility in early December—$2.9 billion that time.

With the ability to purchase up to $500 billion in notes, the MLF never came close to getting maxed out.

Tom Kozlik, head of municipal strategy and credit for HilltopSecurities Inc., explained that a reason so few states and localities turned to the facility is that, for most of them, it was expensive compared to the very low borrowing costs in the municipal market during the year. “The market normalized after April and it was not really needed,” he added.

Democratic lawmakers and state and local advocacy groups pushed during the time the facility was available to loosen some of its guidelines so it would be open to more local governments, and also to allow for longer-term loans and lower interest rates.

Sen. Elizabeth Warren and two other Democratic senators, for instance, in a letter over the summer, urged the Fed and Treasury Department to extend the maximum loan duration and adjust interest rates for the municipal program to “at least match the generosity” offered through facilities “that lend to businesses that are of even poorer credit quality than the municipal borrowers.”

In this way, the facility began to slide somewhat into the broader, ongoing and highly partisan debate about how to best assist state and local governments during the pandemic. In general, Democrats have favored providing more aid, while Republicans recoil at the idea of “bailing out” mismanaged states.

Kent Hiteshew, a deputy associate director in the division of financial stability at the Fed, earlier this year outlined some of the limits of the Fed program, and the central bank’s approach to it.

“We cannot make grants or forgivable loans, and we cannot lend to insolvent or highly distressed entities,” he told lawmakers in September. “We measure the success of the MLF based not on its volume of lending but, rather, on the condition of the municipal securities market and state and local government access to capital.”

Despite disagreements over the program’s appropriate role and scope, Kozlik said the MLF did accomplish its higher level goals. “It was supposed to be a last-ditch facility that was there in a worst case scenario,” he said, not an alternative to the general bond market.

He predicts that if markets do deteriorate badly again, lawmakers will once more step in and find a way to offer some type of support. “It could be like the programs we saw in 2020,” Kozlik said, “or a revamp of them or something new depending upon the circumstances.”

ROUTE FIFTY

by BILL LUCIA

DECEMBER 23, 2020

[7 State and Local Fiscal Lessons from a Year Like No Other.]

The COVID-19 pandemic recession has revealed major cracks in our systems of public finance, from the way we tax to the limits of fiscal federalism. We need to get to work on repairs.

As 2020 winds down, it's the time to look back on lessons learned from the unique experience we've all had in the COVID-19 era, which has challenged and stressed our systems of public finance in ways not experienced since the Great Depression. For state and local governments, there are some important takeaways that should be remembered for years to come:

Progressive taxation has its drawbacks when the economy tanks. Modern public finance theory typically favors progressive taxation, in which wealthier citizens pay a larger share of their incomes, as the most equitable way to raise revenues. This is a conventional credo among Democrats and moderate Republicans, and some states have reacted by shifting their income tax structures from a flat rate to a graduated schedule. California taxes its millionaires at a 13.3 percent marginal rate that takes in capital gains on investments. With movie and sports stars, corporate execs, beachfront billionaires and Silicon Valley fat cats contributing a big chunk of revenues, the state's progressive income tax produces huge budget surpluses whenever the stock market hits new highs.

It's no surprise that each time that happens, advocacy groups and unions line up with laundry lists of spending proposals to share the budget surplus by trickling that money down to needy residents and public employees. But the downside of this tax structure, with its over-reliance on taxing income as opposed to stabler revenue sources such as property, is that revenues collapse every time there is a recession or market crash, and the state quickly plunges into a budget deficit. That shortfall in turn ignites campaigns to raise income taxes yet further to avoid layoffs and cutbacks in an endless cycle of ratcheting and spending.

Continue reading.

GOVERNING.COM

GIRARD MILLER, FINANCE COLUMNIST | DECEMBER 22, 2020

Economic Boost From Stimulus Seen as States and Cities' Best Bet.

- **Federal package has no direct aid to cities and states**
- **Municipal governments will feel the recovery unevenly**

The federal stimulus passed by Congress this week doesn't include any direct cash to states and cities, leaving them to rely on the economic boost the aid package promises to fend off some of the deep spending cuts and budget shortfalls caused by the pandemic.

That means the recovery for municipal governments will likely be felt unevenly, dragging into late 2021 or even longer for those areas hit hardest by fiscal hit from Covid-19, according to a report by the National Association of State Budget Officers.

States saw revenue drop in fiscal 2020 after nine years of growth, and anticipate further declines in the following year, according the budget officers association. Local governments with revenues tied to battered industries, such as energy, travel, and tourism, will feel the sharpest impact.

The federal stimulus package passed by Congress this week includes billions of dollars in funding for small business assistance, education, transportation and other social programs that Moody's Investors Service said would bolster the credit of government bond issuers.

"We expect the new Covid-19 relief legislation to be accretive to annualized real GDP performance in Q1 2021 sufficient to avoid a contraction," said Jeffrey Lipton, a managing director and municipal debt analyst for Oppenheimer & Co., in a research note Wednesday.

The fate of the pandemic relief legislation, however, remains in doubt after President Donald Trump late Tuesday demanded last-minute changes to the bill.

Bloomberg Markets

By Nic Querolo

December 23, 2020, 10:00 AM PST

The State of Local Government in the Pandemic Era: Read the Survey Results

The local government survey of U.S. cities and counties reveals trends around COVID, remote work and digital infrastructure investments.

Local governments have done commendable work addressing urgent challenges to the way they work and serve their communities during the pandemic, while nearly all face revenue shortfalls, according to analysis of over 500 responses to OpenGov's State of Local Government Survey.

The other good news is over 60 percent of local governments represented in the survey are either using or considering CARES Act funding and other grants to modernize their technology and processes and enable staff. As always, however, there is more work to be done beyond meeting first-order needs.

The goal of the survey was to learn where towns, cities and counties across the U.S. are investing now, and what gaps they perceive across their technology, processes and talent. Survey respondents represent 501 local governments, including 113 elected officials and executive-level public leaders, 238 public finance leaders and 149 public finance staffers from small and large towns and counties across the U.S.

What is clear is that, given operational needs, local governments must move quickly to align around initiatives and make critical investments if they want to take advantage of federal and state grant funding that is currently available to make needed investments.

Continue reading.

OPENGOV/AWS | DECEMBER 3, 2020

Municipal Budget Crunch Pressures Payrolls. And Direct Federal Stimulus Isn't Forthcoming.

State and local governments won't receive direct aid if the latest version of the $910 billion stimulus package is signed into law—and when it comes to employment at municipalities, there is a lot of lost ground to recover.

The bipartisan stimulus deal that Congress passed on Dec. 21 includes $600 stimulus checks, expanded unemployment aid, and $325 billion of small-business funding, as well as extra direct funding for municipal entities such as schools, transportation, and state health-care efforts. The bill doesn't make grants to states—a topic of controversy during negotiations. And while it isn't clear if the package will be signed into law, stimulus should indirectly support municipal revenue through sales and property taxes.

"Overall, we think the agreement will allow finances to muddle through. It offers a short-term lifeline for schools, mass transit, and health care, and helps avoid the benefit cliff that was soon to occur," wrote Tom Kozlik, head of municipal strategy and credit with HilltopSecurities.

A Dec. 23 report from the National Association of State Budget Officers provides a sobering view of states' fiscal situations. Revenue fell for the fiscal year ended June 30, for the first time in a decade, according to preliminary data.

Part of the reason for the decline may be the Cares Act's tax-deadline delay to July 15. Even so, states are planning to reduce general-fund spending by 1.1% in the current fiscal year, according to the report. The second-most common way states say they are cutting back, behind "targeted cuts," is hiring freezes.

In fact, after a temporary hiring rebound in April and May, state and local governments have lost workers the past few months, according to the Bureau of Labor Statistics. This year's budget crunch and pandemic have dealt a severe blow to a sector that has historically provided nearly 15% of U.S. payrolls.

Since February, there have been roughly 1.4 million state and local government jobs lost, according to the BLS, nearly 7% of the jobs that existed in that sector before the pandemic.

That 7% may not sound too severe, as it is roughly comparable to the total share of jobs lost in the U.S. But even as the job-creation trend has continued across the total labor market, it has reversed course within state and local governments. While there have been a total of 1.5 million jobs created in the U.S. since August, state and local government payrolls have fallen by 321,000.

Excluding the worst of the job losses in May and June, state and local government employment hasn't been this low any month since 2001. Those payrolls now make up slightly less than 13% of the total U.S. nonfarm payroll workforce—the lowest proportion since at least 1975, BLS data show.

To be fair, it does look like at least 9,000 additional job losses could be avoided if the bill becomes law. Congress allocated about $4 billion in funding for New York's Metropolitan Transportation Authority, and the agency says that money will allow it to "get through 2021 without devastating service cuts and layoffs."

Schools would also get some relief from the package. That and the transit relief should provide "a good chunk of money—to start," says Elizabeth Pancotti, policy adviser at Employ America. She estimates that a “plurality” of state and local jobs lost were in education, though it isn’t yet clear how many are permanent.

Even if the aid arrives, 2021 may not get off to the best start—K-12 education is slated to see the largest cuts in state general-fund spending, with enacted budgets reflecting a $7.4 billion reduction. Before the pandemic, governors had recommended an aggregate $8.1 billion increase in spending.

“Schools are just facing insurmountable costs,” Pancotti says. “It’s likely we’ll have to come back to explore more discretionary funding.”

Barron’s

By Alexandra Scaggs

Dec. 24, 2020 11:00 am ET

Fitch: New Federal Aid to Steady State and Local Budgets

Fitch Ratings-New York-22 December 2020: The roughly $900 billion federal stimulus package passed by Congress on Monday night will help stabilize state and local budgets in fiscal 2021 even if it does not include direct aid to most governments, according to Fitch Ratings. However, the new bill’s ability to stem recent economic declines and related effects on tax revenues is not assured and depends upon increased business and consumer confidence, which is influenced by vaccination rates.

The aid to individuals, low-income communities and small businesses included in the relief package should help boost economic activity until widespread coronavirus vaccination enables more organic economic growth. Other provisions include direct aid for education, transit and pandemic response, as well as an extension of the deadline to spend earlier federal aid to state and local governments. While the total package is considerably smaller than the nearly $3 trillion in total stimulus provided last spring, it provides immediate relief and may be followed by additional stimulus early in the Biden administration.

The spring round of coronavirus legislation provided essential economic support, boosting activity and driving tax revenue performance ahead of expectations for state and local governments, as noted in our on-demand webinar US States’ Path to Economic Recovery. Economic components of the new stimulus include $284 billion to restart the Paycheck Protection Program, compared with $670 billion previously authorized; $600 stimulus payments to qualifying individuals and $600 for dependents, versus $1,200 for individuals and $500 for dependents provided under the March Coronavirus Aid, Relief, and Economic Security (CARES) Act; supplemental weekly federal unemployment benefits of $300 into mid-March, less than the $600 provided under CARES; and an extension of CARES-specific unemployment programs until they are phased out beginning in March. Fitch’s December Global Economic Outlook anticipated $1 trillion in stimulus in 1Q21, which would help stop erosion in economic gains, resulting in stagnation in early 2021.

The package, similarly structured to the CARES Act, includes $54.3 billion for K-12 schools and $22.7 billion for higher education, well above the respective $13.5 billion and $14.25 billion provided under the CARES Act; $14 billion in additional transit funding, less than the $25 billion provided under CARES; and $10 billion for state transportation departments hit by declines in gas tax revenues – all of which will help alleviate fiscal pressure on state and local governments. It also provides $30 billion for vaccine procurement and distribution, with nearly $9 billion going to the Centers for Disease Control and Prevention and states. This should help cover most of the initial funding needs of state and local governments with regard to vaccination efforts, as the National Governors Association and the Duke-Margolis Center for Health Policy recently estimated public health leaders have requested at least $8.4 billion in federal funds to conduct vaccination program activities.

The legislation also includes a year-long extension of the Dec. 30 deadline to spend $150 billion provided under the CARES Act Coronavirus Relief Fund (CRF) for state and local governments. Based on guidance from the U.S. Treasury, many governments have used the CRF to address budget challenges, particularly in funding public safety and health costs. Similar to CARES, the new stimulus does not explicitly address pandemic-driven revenue shortfalls, but it does provide flexibility given the still-uncertain fiscal and economic environment.

Fitch's analysis does not assume receipt of any additional direct aid for state and local governments or higher education institutions. With at least a modest economic boost from the new stimulus and widespread vaccination on the horizon, we think direct governmental aid is less critical to financial stability than it was in the early days of the crisis.

Contact:

Amy Laskey
Managing Director, US Public Finance
+1 212 908-0568
Fitch Ratings, Inc.
Heart Tower
New York NY 10019

Eric Kim
Senior Director, Head of US State Ratings
+1 212 908-0241

Michael Rinaldi
Senior Director, Head of US Local Government Ratings
+1 212 908-0833

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

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

[State Tax and Economic Review, 2020 Quarter 2.]

States Saw Freefall Drop in Revenues in the Second Quarter; Partly Offset in the Third

Quarter but Still Depressed from Pandemic

Abstract

States saw steep declines in revenues in the second quarter of 2020, though some of this was caused by shifting revenues into the next quarter and next fiscal year. Consequently, most states ended fiscal year 2020 uncertain about their fiscal bottom line. Many states cut spending, laid off or furloughed workers, or used federal aid or rainy-day funds, while they waited to see what their revenues would be after the July 15 income tax filing deadline.

States are still facing unprecedented fiscal uncertainties because of the pandemic which has substantially weakened the economy since March. The recent surge in infection rates mean depressed business activity for a wide range of businesses and services across virtually all states, possibly less consumer spending, and less sales tax revenues for states. Although COVID vaccines are on the horizon, it will take a long time for business activity to return to pre-pandemic levels, with some activities and industries facing a very slow recovery.

[View the full report.]

The Urban Institute

by Lucy Dadayan

December 24, 2020

[GFOA: Looking Back at 2020]

"As we approach the end of the year, a time when we traditionally look back on the past year, there's no way to avoid the fact that 2020 was a period of unprecedented challenges, uncertainty, and loss. Through it all, though, state and local government employees did what they do best – serve their communities.

As CEO of an organization that represents more than 21,000 finance officers, I am proud of the way our members confronted this challenge. By being strategic, learning from each other, and employing best-practice approaches, governments have served their constituents through everything 2020 has thrown at us.

We at GFOA are proud of the ways in which we've been able to help governments be their best."

[Continue reading.]

[SIFMA Expects Long Term Municipal Issuance to Reach $452 Billion in 2021.]

New York, NY, December 22, 2020 – SIFMA today released the results its [2021 Municipal Issuance Survey]. Respondents expect total long-term municipal issuance to reach $452.0 billion in 2021, a 3.2% decrease from the $466.9 billion expected to be issued in 2020. Short-term issuance is expected to increase to $50.0 billion in 2021, a 13.9% increase from $43.9 billion expected to be issued in 2020. Including short-term issuance, total municipal issuance is expected to total $502.0

billion in 2021, down 1.7% from $510.8 billion expected to be issued in 2020.

Respondents were polled as to events that would most likely have the greatest effect on the municipal market in 2021. Federal stimulus, COVID-19 vaccine and general economic weakness/slow growth were identified as factors to have the greatest effect in 2021, followed by federal government focus on infrastructure finance.

Respondents project long-term tax-exempt municipal issuance to reach $298.0 billion in 2021, slightly down from $315.1 billion expected in 2020. Projected volume for taxable municipal issuance in 2021 is $145.0 billion, a 1.9% increase from $142.2 billion expected to be issued in 2020.3 Alternative minimum tax (AMT) issuance is expected to decrease in 2021 to $9.0 billion, down 6.1% from $9.6 billion expected in 2020.

The share of refundings is expected to decrease in 2021, with 34.0% of long-term tax-exempt issuance expected as refundings compared to 44.3% expected in 2020.

Floating rate issuance is expected to total $2.0 billion in 2020, up 3.6% from $1.9 billion in 2019.

Respondents were generally unanimous that general purpose and education would be the two largest sectors for 2021, followed by utilities and public facilities. In prior years, the general-purpose sector has traditionally been the largest issuing sector by gross amount.

Respondents expect approximately 75 issuers to default in 2021 for a par value of $3.0 billion, defined for the purposes of the survey as the occurrence of a missed interest or principal payment or a bankruptcy filing.

Following the FOMC lowering the federal funds target rate to 0 to 0.25% in March 2020, the federal funds rate (mid-point) is expected to rise from 0.13% in end-September 2020 to 0.19% by end-December 2020 and then dip down as low as 0.11% in March and June 2021 and finish back at 0.25% by end-December 2021. The two-year Treasury note yield is expected to gradually rise from 0.14% end-September 2020 to 0.26% by end-December 2021. The 10-year Treasury note yield is expected to also gradually increase from 0.68% end-September 2020 to 1.18% end-December 2021. The ratio of the yield on 10-year AAA G.O. municipal securities to the 10-year Treasury benchmark is expected decrease from 122.92% at end-September 2020 to 76.0% end-December 2020 but increase back to 85.0% by end-December 2021.

December 22, 2020

SIFMA US Municipal Issuance Survey 2021.

Respondents to the 2021 SIFMA Municipal Issuance Survey expect total long-term municipal issuance to reach $452.0 billion in 2021, a 3.2% decrease from the $466.9 billion expected to be issued in 2020. Short-term issuance is expected to increase to $50.0 billion in 2021, a 13.9% increase from $43.9 billion expected to be issued in 2020. Including short-term issuance, total municipal issuance is expected to total $502.0 billion in 2021, down 1.7% from $510.8 billion expected to be issued in 2020.

View the Survey.

December 22, 2020

Municipal Bonds Aren’t Out of Peril.

The initial Covid-19 shock has faded, but assuming that things are back to normal in the $4 trillion municipal bond market would be a mistake.

Investors in staid municipal bonds got a shock when the U.S. went into lockdown in March: Yields on some of the highest-quality issues ballooned to more than three times that of Treasurys of similar maturity. They usually are somewhat lower than those of Treasurys due to their tax advantages.

The dislocation didn’t last long, but assuming that things are back to normal in the $4 trillion market would be a mistake. There were two reasons for the big divergence: Investors rushed to own Uncle Sam’s liabilities—the safest, most-liquid securities in the world—to the exclusion of nearly everything else. But they also fretted that the collapse in commerce, travel and employment would crush state and local revenue.

“We have no money,” said New York Governor Andrew Cuomo in a March radio interview at the height of this spring’s emergency.

New York’s situation now looks less dire, but the damage to it and other issuers is substantial. State tax collections nationwide were 6.4% lower between March and August against expected growth of 2% to 3%, according to the Center on Budget and Policy Priorities. Cities were even worse off with an average 21% revenue drop since the pandemic began, according to a survey released this month by the National League of Cities. Meanwhile, the pandemic brought unexpected expenses.

The degree to which state and local coffers were hurt depended largely on how they raise money. Jurisdictions that rely largely on income taxes took a hit and those relying on tourist spending did even worse. Cities that fund themselves mostly on property taxes could be in fairly good shape as long as they aren’t dependent on struggling malls and office buildings.

Yet most municipal bonds don’t rely directly upon the general taxing authority of state or local governments. About two thirds are revenue bonds backed by some other stream of income. Investors should take little solace in the fact that downgrades have been muted so far. They also didn’t spike during the global financial crisis, instead peaking in 2012.

This recession is different, hitting certain parts of the economy hard. Municipal bonds backed by airports, hospitals, toll roads, universities, nursing homes or stadiums could be in particular trouble. Normally these are desirable issuers because they are paid with the asset’s revenue or from special taxes. Even a city or state’s bankruptcy might not affect them.

Some bonds in this category were surprise winners. For example, those backed by payments from tobacco sales have had a great year, outperforming even Treasurys, as people smoked more than expected. An index of tobacco-backed bonds maintained by S&P Dow Jones Indices had risen by 15.3% over the past year through Dec. 18 while two backed by higher education and transportation both were up by just 4.7%.

Investors need to look past the ledgers of individual issuers and ask what the broader impact of financial strain might be. For example, New York’s Metropolitan Transportation Authority, America’s largest public transit system, can’t legally declare bankruptcy, but it faces daunting shortfalls. Half of its revenue in 2019 came from fares and tolls, which could take years to recover. If train and subway service have to be cut back, as threatened, that would harm New York’s attractiveness to commuters and tourists, with all the tax revenue they bring. Although the MTA does stand to receive some stimulus aid to delay service cuts, the city and state, along with the MTA, have been downgraded recently.

New York City is still far from its predicament in 1975 when it was hours away from defaulting after a failed appeal to Washington that sparked the famous headline “Ford to City: Drop Dead.” The Federal Reserve has helped push bond yields, most munis included, to near record-lows, and has bought bonds outright through the Municipal Lending Facility. Even so, a lack of direct federal assistance to struggling cities and states in the latest stimulus package, as well as a pandemic and remote-work fueled exodus to suburbs and low-tax states, could lead to service cuts and fiscal strains for already shaky borrowers in a vicious cycle.

One saving grace has been the boom in stock prices since March. That, along with low bond yields, helps to buoy the value of trillions of dollars in public pension funds and to fuel individual capital gains taxes. But even a continuing bull market won’t be enough to bail out the most at-risk retirement systems. Those in Illinois, Kentucky, Connecticut and New Jersey are less than half funded according to the Pew Charitable Trusts.

The pandemic’s initial effect on the muni market might be scattered defaults in categories obviously strained by its initial effect such as hospitals, but states’ cash flow problems today could hasten the market’s real doomsday scenario—a state being forced to choose between shortchanging bondholders or retirees.

Much like its human pathology, Covid-19’s symptoms faded quickly for most in the muni market but could continue to haunt those with weakened systems.

The Wall Street Journal

By Spencer Jakab

Dec. 25, 2020 5:30 am ET

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5 Trends to Watch in 2021 Public Finance.

- Increase of large infrastructure financings funded by the federal government – The Biden Administration is expected to continue and further advance a 2019 trend that saw the federal government spend $29 billion on infrastructure and a transfer of an additional $67 billion in infrastructure spending to states. Half of this funding went to highways with air and rail being the next biggest categories.
- Corresponding decrease of Public Private Partnerships (PPP) for infrastructure projects given more federal government funding and challenges in recent partnerships – Challenges include lack of public sector capacity and experience among private businesses; dealing with the complexity of the preparation, procurement, and management of PPP contracts; and the demand for extensive resources that can characterize these projects.
- Defaults in the area of commercial real estate debt held by REITs and financial institutions – This trend is a continuation of one that started in 2020 as banks demanded more cash collateral and borrowers halted loan payments amid the Coronavirus 19 (COVID-19) pandemic.
- Continued pressure on tourism related taxes may result in defaults in convention-based hotels and sports and entertainment facilities – Although the introduction of COVID-19 vaccines may encourage more people to travel, it is more likely that the 2020 trends will continue and cities and states will continue to struggle to collect the tourism related taxes pledged to secure the debt

issued to build publicly owned convention center hotels and sports and entertainment facilities.
- Without significant federal aid, continued decreases in municipal and state services – As it appears uncertain that the federal government will assist states and municipalities with funding emergency services necessary due to COVID-19, they may be forced to devote resources to these and halt other services.

Greenberg Traurig LLP – Warren S. Bloom and Franklin D.R. Jones Jr.

December 24 2020

TAX - INDIANA

Millikan v. City of Noblesville

Court of Appeals of Indiana - December 7, 2020 - N.E.3d - 2020 WL 7134869

Property owners filed complaint against the city to quiet title to property they claimed to have acquired title to through adverse possession.

Parties both filed motions for summary judgment and, after a hearing granted the city's motion. Thereafter, the trial court denied property owners' motion to correct error. Property owners appealed.

The Court of Appeals held that property owners substantially complied with the statutory tax payment requirement for establishing title by adverse possession.

Property owners, who filed complaint against the city to quiet title to tract of land that they claimed to own under the doctrine of adverse possession, did preserve for appellate review the argument that because they had openly maintained exclusive possession and control of the disputed property for 27 years prior to any special assessments being due they had satisfied the statutory tax payment requirement for establishing title by adverse possession; although they could have raised the issue more clearly in their motion to correct error, property owners did raise the issue in their summary judgment motion when they asserted that they satisfied the statutory requirements prior the city's assertion of drainage assessments on disputed property.

How Muni Bonds Fared in 2020 and What to Expect in 2021,

Municipal bonds fared better than expected throughout 2020 despite the global pandemic and subsequent impact on state and local government budgets. With record issuance and strong investor interest, muni bonds posted robust performance during the year and their yields have largely normalized since disruptions in March.

Let's take a look at how muni bonds fared over the past year and what investors can expect in the new year.

Continue reading.

municipalbonds.com

by Justin Kuepper

Dec 23, 2020

Bond Boom Comes to America’s Colleges and Universities.

Eyeing low rates and financial pressure tied to Covid-19, higher-education institutions are issuing a record amount of debt this year

Faced with a rapid deterioration in their finances in 2020, America’s colleges and universities issued a record amount of bonds this year.

It is a stressful time for higher education. The coronavirus pandemic worsened existing pressures on tuition and auxiliary revenue, with international students opting to study outside the U.S. and money from room and board drying up as schools keep classes online. At the same time, demand for financial aid and costs related to providing protective gear and Covid-19 testing have jumped.

Hoping to address possible shortfalls and take advantage of ultralow rates, universities have flooded the market with debt. With few places to get a return in the bond market, investors have scooped up the issues, which in some cases offer yields of 2% or 3% for debt that matures in 15 to 30 years.

The higher-education sector “becomes attractive because it’s under pressure,” said Daniel Solender, who oversees tax-free fixed-income investments at asset manager Lord Abbett & Co., referring to rising yields on higher-education bonds as schools’ ability to navigate the pandemic came into question. The firm added more than $300 million to its holdings of such bonds this year.

“There are a lot of high-quality institutions with great reputations, great balance sheets, that will find a way to make it through this environment,” he said.

For the year through November, colleges and universities issued more than $41.3 billion in taxable and tax-exempt fixed-rate debt, including refinancings, a record since Barclays began tracking the data. The data included issuance from schools with top-notch credit ratings, including Brown University and the University of Michigan, as well as lower-rated schools like Linfield University in McMinnville, Ore., and Alvernia University in Reading, Pa.

Moody’s Investors Service MCO 1.15% in March lowered its outlook on the entire sector to negative from stable, citing uncertainties and financial challenges brought on by the pandemic. S&P Global Ratings lowered its outlook on a raft of schools in May and no longer maintains a positive outlook on a single one of the schools it rates. Attempting to help alleviate some of the pressure, more than $20 billion was allotted to public and private higher education in the latest Covid-19 relief bill passed by Congress.

John Augustine, who leads the higher-education and academic medical-center finance group at Barclays, said the bond issuance came from institutions trying to reduce their fixed costs. For some, he said, borrowing money at low rates was more attractive than dipping into their endowments at a possible cost to future generations of students.

The New York Institute of Technology refinanced $17 million in debt this summer as it sought to bolster its cash holdings, extending the repayment timeline to 2030 and lowering its annual debt service to around $3 million from upwards of $7 million.

“Trustees were concerned about the market turmoil they saw going on and how that might affect our liquidity," said Barbara Holahan, chief financial officer and treasurer of the private university.

She said freeing up cash became a bigger priority as international student enrollment fell and expenses rose.

Part of the sector's appeal for investors stems from the long-term maturity of college and university bonds, said Jim Costello, who heads higher-education finance at J.P. Morgan. JPM -0.44% Corporate bonds rarely last more than a decade, while higher-education bonds typically have maturity dates 30 years out.

"The AAA- and AA-rated schools are pretty unique assets to own," Mr. Costello said. "It's very hard for these bond investors to find very highly rated, very long-duration assets." He said many schools already had planned before the pandemic to issue bonds this year, but that they had subsequently increased the size of their borrowing.

A further boost for the asset comes from investors' search for yield.

After the Federal Reserve cut rates to near zero in March to help stabilize the economy, investors have reset the benchmark by which they judge the relative attractiveness of various asset classes and risks. That has contributed to soaring equity markets this year, as well as appetite for municipal bonds.

Wofford College in Spartanburg, S.C., opted for a $17.5 million private placement with Synovus Bank in September. The small liberal-arts college was refinancing existing tax-exempt debt, drawn in part by low rates.

Wofford finance chief Chris Gardner said the school wound up cutting its yield on 15-year bonds to 2.1% from 3.39%, saving about $100,000 a year.

"Everybody's looking for some kind of yield. As low as 2% is, you can compare that to sovereign debt where you're getting negative yields on half the countries in the world," Mr. Gardner said.

For decades, colleges and universities largely sold bonds to finance new construction of academic buildings, dorms and sports complexes, and to tackle deferred maintenance. Like many other municipal bonds, these offerings are typically tax-exempt. Some schools issue taxable bonds because they come with fewer restrictions governing use of the funds.

Tulane University in New Orleans received $1.5 billion in orders for $187 million in debt this summer. Institutions that invested include BlackRock Inc., BLK 0.50% Lord Abbett and Vanguard Group, said Tulane operating chief Patrick Norton.

Tulane had the new bonds in the works even before the pandemic to finance new construction and refinance $25 million in existing debt. The school waited until it firmed up plans to bring students back to campus for the fall, ensuring continued cash flows, Mr. Norton said.

It locked in an all-in 3.12% yield on bonds with an average life of almost 20 years, compared with the 3.31% it got on 2017 bonds with an average life of about 12 years.

The University of Wisconsin-Madison hasn't been as fortunate.

Unlike most public universities, the flagship can't issue debt of its own because of state statutes. It instead participates in the state's issuance and refinancing of tax-exempt general obligation bonds. Campus administrators have been citing the pandemic in discussions with lawmakers this fall to press for the ability to issue bonds, said Laurent Heller, the school's vice chancellor for finance and administration.

Among other pressures, the University of Wisconsin-Madison has been hit by lost revenue related to room and board and its athletics program, whose 80,000-seat football stadium has been sitting empty since March. It has furloughed staff and made other cost cuts but still expects to have a significant budget shortfall in the fiscal year ending in June, he said.

"It's a part of the tool kit of every major university," Mr. Heller said. Without the ability to issue debt on its own, "we face more pressure to do immediate expense reductions."

The Wall Street Journal

By Juliet Chung and Melissa Korn

Dec. 26, 2020 5:33 am ET

—Heather Gillers contributed to this article.

SolarWinds Cybersecurity Exploit: What Water Providers Need to Know and Do - Nossaman

In light of the major cybersecurity breach of the SolarWinds Orion software by malicious actors, the Water Information Sharing and Analysis Center (WaterISAC) recently issued a series of advisories providing guidance for water providers across the country on how to respond and react to this unprecedented cyberattack.

As highlighted in the WaterISAC advisory issued on December 16, 2020, the Environmental Protection Agency has recommended that all water and wastewater utilities review the Cybersecurity and Infrastructure Security Agency's (CISA's) Emergency Directive 21-01 for mitigation procedures. While Emergency Directive 21-01 is specifically directed at federal agencies, it provides helpful steps that water providers can take to mitigate the potential impacts of this widespread attack that has impacted major international institutions.

The latest information about the SolarWinds cybersecurity exploit can be found on the website about this incident maintained by SolarWinds. It was first reported to the National Security Agency by cybersecurity firm FireEye, who has published a detailed blog post on this incident and shared a GitHub page with recommended detection countermeasures.

The incoming Biden Administration, echoing testimony this week on Capitol Hill from the former head of the Department of Homeland Security's CISA, stated that cybersecurity must be a top priority for the incoming Administration and Congress because America is vulnerable. We will continue to track and provide updates on this topic.

By Hon. Chris Carney, Willis Hon on 12.23.2020

Nossaman LLP

The 'Highway Boondoggles' That the Pandemic Hasn't Killed.

The U.S. Public Interest Research Group singles out seven highway projects deemed especially wasteful in a coronavirus-challenged year.

Fun fact: A century ago, the word "boondoggle" referred to the boxy lanyards that kids weave at summer camp. It gained its other meaning in the mid-1930s, after U.S. news reports revealed that a federal New Deal program was paying jobless workers to learn and teach the craft to disadvantaged youth. President Roosevelt's critics latched on, and while his administration defended and continued its policies, the term became synonymous with useless government spending.

Nearly 100 years later, arguments over what constitutes wasteful expenditures take on a more existential tenor as the U.S. faces a public health crisis and runaway global warming. Released this month, the U.S. Public Interest Research Group's sixth annual report on highway boondoggles is an example: It calls out "seven budget-eating highway projects slated to cost a total of $26 billion that will harm communities and the environment, while likely failing to achieve meaningful transportation goals."

Continue reading.

Bloomberg CityLab

By Laura Bliss

December 17, 2020, 1:05 PM PST

Missouri Supreme Court Won't Hear Appropriation Bond Default Case.

The Missouri Supreme Court's refusal to hear the bond trustee's appeal deals a final blow to litigation over whether Platte County bears legal responsibility to repay $32 million of defaulted appropriation-backed, development bonds, the county's attorneys said.

UMB Bank NA asked the state's high court to hear its appeal of lower court rulings backing the county's position that it was not on the legal hook to cover a shortfall in revenues generated in a special tax district that repay the bonds.

The case was considered a longshot among market participants based on the appropriation backing that does not legally obligate a sponsoring government to honor the pledge with the incentive instead being a government entity's investment grade rating and market access.

But the trustee had argued that the financing agreement tied to the bonds offered a layer of protection that did require the county to make up pledged revenue shortfalls.

"This puts an end to the unfortunate effort by the trustee to force Platte County into paying taxpayer funds to bondholders that it never agreed to pay at the outset," said attorney Todd Graves, who represented Platte County along with Graves Garrett partner Dane Martin. "This case could potentially impact countless bond financing arrangements for counties and cities throughout Missouri."

Platte County leaders decided in 2018 not to cover a $765,000 shortage in tax monies generated by the Zona Rosa shopping center in Kansas City. Revenues had been pledged to repay a 2007 Platte County Industrial Development Authority issue. Officials worried that the price tag would eventually total more than $40 million through 2032, forcing tax hikes or service cuts. The estimated shortfall is currently about $3.6 million.

The decision cost the county its investment grade bond rating.

The county filed a lawsuit against UMB in November 2018 seeking court affirmation that it was not obligated to cover shortfalls because the trustee had threatened its own action. A Platte County Circuit Court judge agreed with the county in a May, 2019 ruling.

The trustee appealed and an appellate court panel on Aug. 25, 2020 upheld the lower court decision that the county bears no legal obligation. The trustee in September sought a rehearing that was rejected and it then asked the Missouri Supreme Court to take the case. The high court rejected the application on Dec. 22.

“The trustee will provide further information on EMMA as it becomes available, continue to advise the committee formed regarding the bonds, and work with counsel to explore and consider its options, all in the best interests of bondholders,” UMB wrote in a Dec. 24 notice filed on the Municipal Securities Rulemaking Board?s EMMA website.

Though the county won’t cover shortfalls, bondholders continue to see some payments from what revenues the shopping center district does generate that are pledged to repayment.

UMB reported in the Dec. 24 notice that it made the full $724,750 interest payment due on the bonds Dec. 1 but none of the $850,000 of principal due was paid. “The payment was made up of funds received from the districts but also a draw of $392,228.49 from the debt service reserve,” UMB said. The reserve fund held $1.69 million following the payment and other fees.

The district sent $113,000 in revenue to the trustee last January. That dwindled to a low of $38,000 in June as the COVID-19 pandemic stung sale tax collections. It fluctuated in subsequent months hitting $95,000 in September, was $45,000 in November and $78,000 for December.

A debt service payment of $724,750 in interest was paid in full June 1. No principal was due. The bonds traded this month around 45 cents on the dollar. About $29 million is outstanding.

The bonds are not secured by a deed or mortgage and remedies in the event of a default are heavily influenced by judicial actions should a restructuring or bankruptcy be sought.

Municipal Market Analytics did not believe the legal case had much traction but finds the county’s willingness to renege on the pledge despite market consequences as troublesome.

“This was an appropriation security, so its payment was always subject to the county’s appropriation. But the county’s failure to pay debt service speaks to its lack of willingness to honor its agreement with bondholders. Platte County is no longer a good faith participant in the municipal bond market, and none of its security pledges can be considered investment grade or should be sold to retail bond buyers,” said Matt Fabian, a partner at MMA.

Since 2009, MMA has seen nine local appropriation credits in Missouri suffer impairment.

“It’s a compelling pattern. Municipal investors need to be skeptical about local Missouri governments honoring their appropriation securities if the underlying project struggles, meaning that local GOs in the state are relatively more vulnerable to getting downgraded to junk if their issuer has appropriation debt outstanding," Fabian said.

Moody's Investors Service cut the county"s rating – then at Aa2 – to junk in September 2018. Moody's rates the county Ba3 with a negative outlook.

S&P Global Ratings stripped the Zona Rosa bonds of their investment grade rating in September 2018 after county commissioners discussed at a public meeting their opposition to making up future shortfalls absent a long-term solution.

By Yvette Shields

BY SOURCEMEDIA | 12/29/20

How to Be a Shrewd Opportunity Zone Investor.

What does it take to be a shrewd Opportunity Zone investor? Several Opportunity Zone experts provided their insights on a live panel recorded on November 17, 2020 during OZ Pitch Day, titled "Being a Shrewd Opportunity Zone Investor."

Today's podcast episode is the audio version of that panel. Moderated by OpportunityDb founder Jimmy Atkinson, the panel featured Dave Kunz of Hall Venture Partners, Rocco Forino of DealConnectHub, Jeffrey Maganis of Crowdcreate, Chris Cooley of OZworks Group, and Gerry Reihsen of Coasis Coalition.

Click the play button below to listen to the audio recording of the panel.

Listen to audio.

Opportunity Db

By Jimmy Atkinson

December 23, 2020

Fitch: Illinois' MLF Borrowing Reflects Deep Challenges, but Options Remain

Fitch Ratings-New York-22 December 2020: Illinois' $2 billion borrowing from the Federal Reserve's Municipal Liquidity Facility (MLF) illustrates the depth of its budget challenges, but the state also retains fiscal tools to address them, Fitch Ratings says.

The loan provides a short-term solution for a $3.9 billion fiscal 2021 gap. The governor also recently announced $711 million in budget reductions, and the 2021 legislative sessions will include further action to address the gaps in 2021 and future years. Available options include further expenditure cuts, revenue increases and non-structural solutions.

Fitch considers Illinois notably more constrained in its fiscal choices than other U.S. states. Illinois' 'BBB-' Issuer Default Rating (IDR) and GO ratings and Negative Outlook reflect Fitch's anticipation of a fundamental weakening of the state’s financial resilience given its already tenuous position entering the pandemic. Illinois will be challenged to maintain its investment-grade IDR.

Before the most recent MLF loan, Illinois faced a sizable budget gap the governor estimated at $3.9 billion on a roughly $43 billion general funds budget. Pandemic-driven shortfalls reportedly account for about half of the gap with the remainder reflecting underlying structural issues that are a key factor in the state’s relatively weak credit profile.

Revenue performance has been well ahead of expectation in May’s enacted budget. Both the Governor’s Office of Management and Budget and the legislature’s Commission on Government Forecasting and Accountability revised revenue forecasts upwards by more than $2 billion in November, even while assuming slowing economic growth and additional coronavirus mitigation measures.

The revisions are consistent with trends in many U.S. states as economic activity has rebounded faster than originally anticipated from the spring’s coronavirus-driven trough, as noted in our on-demand webinar US States’ Path to Economic Recovery. Gains have been slowing in the face of rapid virus spread and resultant mitigation responses. Recently enacted federal stimulus should support near-term stabilization of economic activity, and dependent tax revenues, in Illinois and elsewhere (New Federal Aid to Steady State and Local Budgets, published Dec. 2020 on www.fitchratings.com).

The $2 billion MLF borrowing follows the state’s $1.2 billion MLF cashflow borrowing in June. The state will use proceeds primarily to pay down Medicaid bills, leveraging over $1.1 billion in federal matching revenue. To address the remaining $1.9 billion gap for fiscal 2021, the governor announced $711 million in budget reductions last week, most of which will be imposed unilaterally. The reductions do not include any change in education funding.

Despite failure of the graduated income tax ballot initiative, Illinois retains legal authority to implement various revenue enhancements, though political willingness is uncertain. In February 2019, the Commercial Club of Chicago Civic Committee outlined up to $6.4 billion in recurring revenue options, although these estimates relied on pre-pandemic economic expectations.

While the governor has ruled out one suggestion, $1.9 billion from taxing retirement income, other options including raising the personal and corporate income taxes by 1 percentage point ($3.7 billion and $300 million respectively), and a sales tax expansion to more services ($500 million) could generate significant recurring revenue. Changes to income tax credits could be paired with a rate increase to mimic a graduated income tax rate structure.

Fitch anticipates the legislature will consider revenue options and further expenditure changes in early 2021, along with non-recurring options such as further bill deferrals, fund sweeps or utilization of remaining Coronavirus Relief Funds. While the state retains broad legal capacity, Illinois also has a history of deferring or avoiding difficult fiscal choices and instead implementing short-term, non-recurring budget measures that add to long-term challenges. This repeated inability to address its structural challenges remains a key negative rating consideration.

Contact:

Eric Kim
Senior Director
+1-212-908-0241
Fitch Ratings, Inc.

300 West 57th Street
New York, NY 10019

Karen Krop
Senior Director
+1-212-908-0661

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

Additional information is available on www.fitchratings.com

Bloomington Firm Faces SEC Penalties Over Municipal Debt Practices.

A Bloomington investment banking firm and its owner will pay $200,000 in fines for not telling its municipal bond clients about business practices that ultimately reduced the proceeds from their offerings.

The Securities and Exchange Commission on Wednesday announced settled charges against First Midstate Inc., based in downtown Bloomington, and its owner Paul Brown.

The SEC says First Midstate falsely told clients that it had an extensive customer list that would allow it to sell bonds to investors at competitive interest rates. In reality, First Midstate had a limited customer base, and it sold many of the offerings it underwrote to other broker-dealers, not to investors, the SEC said. The purchasing broker-dealer then marked up the bonds and resold them to investors at higher prices—and corresponding lower yields, according to the SEC.

The SEC points to 101 offerings, totaling $198 million, that were sold off to a single broker-dealer between 2014 and 2018. Had First Midstate sold those bonds directly to investors at those more competitive prices, about $1.4 million could have flowed back to issuers as an increase in bond proceeds, the SEC said. Instead, that $1.4 million became profit for the broker-dealers.

In one example from the SEC order, the commission said Brown and Midstate facilitated a $9.47 million bond issue with a First Midstate fee of $283,153 (2.99% of the PAR value of the issue). Brown then resold the bonds to a broker within 22 minutes. That dealer made another $66,638 in fees after marking up the interest on the bonds and selling them. The SEC said the bond issuer did not know the second fee was likely given First Midstate's business practices.

First Midstate did not disclose to customers that its practice was to sell many of the bonds it underwrote to broker-dealers during the public offering, if it did not receive orders from investors, the SEC said. The firm did not disclose that this practice presented a risk to competitive pricing for their bond.

The SEC also noted that since all but one of Brown and Midstate's clients in the investigation were too small to have a separate bond advisor, the firm had an additional obligation to educate the municipalities on the complete terms of transactions.

In the settled charges announced Wednesday, First Midstate and Brown do not admit or deny the SEC's findings. But they have agreed to the order finding that they willfully violated the fair dealing and advertising provisions of federal securities law. In addition to the $200,000 in civil penalties, First Midstate is also required to hire an independent compliance consultant.

The SEC announcement and order do not identify the impacted clients; First Midstate's municipal clients are primarily Illinois school districts, SEC records show. Municipalities often raise capital by issuing bonds, or debt, that are indirectly sold to the public through an underwriter.

A message left with First Midstate was not immediately returned Wednesday.

WGLT.ORG

By RYAN DENHAM | DEC 23, 2020

- SEC Proposes Amendments to Reg ATS for Government Securities ATSs.
- The Biggest Names in Municipals Reflect on an Unprecedented Year.
- 3-D Accounting: Developments in Debt Disclosures and Derivative Instrument.
- *Farmers Bank & Trust v. Homestead Community Development* – Court of Appeals holds that bank, which contracted with city for a loan guaranty on behalf of community development group, was bound at its peril to check city's budget and accounts to verify that city had appropriated necessary funds to pay the guaranty, and thus city's failure to allocate such funds precluded city from having to pay the guaranty pursuant to the Cash-Basis Law and the Budget Law.
- *Davis v. Fresno Unified School District* – Court of Appeal holds that taxpayer's action against school district and contractor, which challenged contracts for construction of a middle school, was a reverse validation action to determine validity of district's decision combined with a taxpayer's action to restrain or prevent an illegal expenditure of public money, and was rendered moot after contracts were fully performed.
- And finally, Great Moments In Judicial Underreach is brought to us. this week by *AEP Texas Central Company v. Arredondo*, in which no less an authority than the Supreme Court of Texas gifted us with the following timeless legal insight, "Removal of a stub pole involves pulling it out of the ground and returning it back to the yard, and filling the hole up with dirt." And filling the hole up with dirt. Next week we'll fill you in on the California Supreme Courts lightbulb changing directive. Stay tuned.

BONDS - CALIFORNIA

Davis v. Fresno Unified School District

Court of Appeal, Fifth District, California - November 24, 2020 - Cal.Rptr.3d - 2020 WL 6882737 - 20 Cal. Daily Op. Serv. 12,214 - 2020 Daily Journal D.A.R. 12,675

Taxpayer brought action against school district and contractor, alleging that contract for construction of a middle school violated competitive bidding requirements, rules governing conflicts of interest, and education statutes, among other claims.

The Superior Court sustained district's and contractor's demurrer and the Court of Appeal reversed in part. On remand, the Superior Court granted district's and contractor's motion for judgment on the pleadings. Taxpayer appealed.

The Court of Appeal held that:

- Taxpayer’s action was a reverse validation action combined with an action to restrain or prevent an illegal expenditure of public money;
- Taxpayer did not abandon or forfeit portion of lawsuit that was an action to restrain or prevent an illegal expenditure of public money;
- Taxpayer’s reverse validation action was rendered moot after contracts were fully performed; and
- It was appropriate for taxpayer to challenge legality of contracts in action to restrain or prevent an illegal expenditure of public money.

Taxpayer’s action against school district and contractor, which challenged contracts for construction of a middle school, was a reverse validation action to determine validity of district’s decision combined with a taxpayer’s action to restrain or prevent an illegal expenditure of public money; even though complaint stated that action was brought as special in rem proceeding for judicial invalidation of contracts, complaint did not state it was “exclusively” or “only” brought as such a proceeding, and complaint’s prayer for relief requesting that contractor be ordered to pay back monies sought relief that was not available in validation action but was available in a taxpayer’s action.

Taxpayer did not abandon or forfeit portion of lawsuit that was brought as a taxpayer’s action to restrain or prevent an illegal expenditure of public money in school district’s construction of middle school, which was combined in lawsuit that also was reverse validation action to determine validity of district’s decision; taxpayer’s opposition to motion for judgment on pleadings asserted his taxpayer’s complaint was not moot, taxpayer used fact that complaint sought remedy not available in reverse validation action to distinguish cases, and taxpayer’s appellate brief requested remand to proceed with trial on in personam taxpayer claims.

Taxpayer’s reverse validation action, which sought declaration that district’s contracts with contractor in constructing middle school were invalid, was rendered moot after contracts were fully performed and no longer in effect; declaratory judgment as to the validity of completed contracts was not effectual relief.

Contracts for construction of middle school were not “contracts” to which validation statutes applied, and thus it was appropriate for taxpayer to challenge legality of contracts in a taxpayer’s action to restrain or prevent an illegal expenditure of public money; school district paid for construction as it was completed, making alternative lease-leaseback approach not a method of financing the construction, but rather a construction contract with no element of financing included, and terms of lease stated that district’s obligations could not be construed as debt or creating indebtedness.

The reference to “contracts” is construed narrowly in the statute that declares that the validation statutes apply to an action to determine the validity of a local agency’s contracts; only contracts involving financing and financial obligations fall within the statute.

In the context of a taxpayer’s action, the fact that the plaintiff could have enjoined the illegal expenditure does not prevent him seeking to recover on behalf of the local agency monies illegally expended.

PUBLIC UTILITIES - CALIFORNIA

Humphreville v. City of Los Angeles

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

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

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

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

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

LOAN GUARANTY - KANSAS

Farmers Bank & Trust v. Homestead Community Development

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

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

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

The Court of Appeals held that:

- Issue of whether city had undesignated funds in excess of the guaranty was irrelevant in determining whether the Cash-Basis Law and the Budget Law rendered the guaranty void;
- City finance director's deposition testimony did not warrant disregarding of her affidavit;
- City's payments to community development group did not ratify the guaranty;
- Fact that the guaranty was contingent on group's default was irrelevant in determining whether the guaranty was void;
- The guaranty was void on its face;
- Notice of bank's tort claims to city attorney did not constitute substantial compliance with statutory notice requirements; and
- Mayor, city clerk, and city attorney acted within scope of employment in executing guaranty.

Issue of whether city had undesignated funds on hand in excess of the amount of guaranty which bank executed with city was irrelevant in determining whether the Cash-Basis Law and the Budget

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

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

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

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

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

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

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

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

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

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

INSURANCE - GEORGIA

[Atlantic Specialty Insurance Company v. City of College Park]

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

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

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

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

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

ZONING & PLANNING - ILLINOIS

[Sullivan v. Village of Glenview]

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

After commercial developer applied for permits to rezone and construct commercial buildings on property adjacent to homeowners' properties, homeowners brought action against city, seeking declaratory judgment invalidating the municipal ordinance purportedly allowing the property to be rezoned.

The Circuit Court dismissed action as untimely. Homeowners appealed.

The Appellate Court held that:

- To constitute a "decision" triggering the limitations period for challenges to municipal zoning

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

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

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

COMMUNITY IMPROVEMENT DISTRICT ASSESSMENTS - MISSOURI

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

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

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

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

The Court of Appeals held that:

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

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

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

PUBLIC UTILITIES - NEW HAMPSHIRE

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

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

EMINENT DOMAIN - OHIO

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

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

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

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

On reconsideration, the Supreme Court held that:

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

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

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

Genuine issue of material fact as to whether state’s suspension of operations of second of two saltwater injection wells due to potential seismicity problems deprived operator of all economically beneficial use of its leasehold precluded summary judgment determination that state effected a total regulatory taking of operator’s property.

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

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

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

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

PUBLIC UTILITIES - TEXAS

AEP Texas Central Company v. Arredondo

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

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

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

The Supreme Court held that:

- Factual issues as to whether contractor properly fill hole precluded summary judgment on negligence claim against contractor;
- Utility did not have a contractual right of control of contractor's work on which to base a duty to landowner;
- Contractor's removal of stub pole was not an inherently dangerous activity giving rise to a nondelegable duty of utility; and
- There was no statute on which to premise negligence per se claim against utility.

COUNTIES - WASHINGTON

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

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

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

The Court of Appeals held that:

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

The Biggest Names in Municipals Reflect on an Unprecedented Year.

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

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

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

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

Here’s what the group had to say:

Continue reading.

Bloomberg Markets

By Danielle Moran

December 18, 2020

What a Joe Biden Win Means for Munis and Taxes.

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

Watch.

Bloomberg Markets

December 18th, 2020

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

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

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

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

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

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

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

Making Good

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

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

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

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

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

Common Support

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

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

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

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

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

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

More Help

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

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

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

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

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

Bloomberg Markets

By Amanda Albright

December 15, 2020, 7:00 AM PST

— With assistance by Stephen Gorin

The Unpredictable Future of Publicly Funded Stadiums.

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

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

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

Continue reading.

dividend.com

Dec 16, 2020

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Alister Bull

December 20, 2020

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

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

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

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

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

Continue reading.

Blooomberg CityLab

by Patrick Sisson

December 18, 2020, 1:22 PM PST

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

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

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

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

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

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

Democratic aides said the dispute over Fed lending powers is the biggest issue impeding final negotiations on coronavirus relief. Lawmakers are aiming to attach the aid to a bill funding the government, and a delay risks triggering a partial government shutdown after midnight Friday when current spending authority expires. Congressional leaders are trying to extend the deadline with another stopgap spending measure, but that too has become entangled in the wider debate on relief.

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

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

A Fed spokesman declined to comment.

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

'Significant Change'

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

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

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

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

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

Unusual and Exigent

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

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

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

Democrats say that including the new language in the bill would fundamentally change the Fed's ability to respond to the pandemic and future economic crises. Republicans say this would prevent the unused money — some $455 billion — from being used for unintended reasons.

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

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

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

Bloomberg Politics

By Catarina Saraiva and Laura Davison

December 18, 2020, 11:46 AM PST

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

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

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

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

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

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

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

The survey collected responses from 130 mayors representing cities with more than 75,000 residents between June and August.

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

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

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

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

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

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

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

ROUTE FIFTY

by ANDREA NOBLE

DECEMBER 3, 2020

Andrea Noble is a staff correspondent with Route Fifty.

The Washington Weekly: Stimulus, Shutdown or Both?

After 6+ months of negation, Congress appears to be on the brink of passing an additional stimulus bill. The package, which will most likely be attached to the year-end funding bill, looks to be approaching $1 trillion dollars but is **not expected to include additional direct funding to state and local governments.**

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

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

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

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

Transition Update:

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

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

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

Fed Recap:

Powell Calls for Additional Debt Purchases

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

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

Further, Powell also discussed the future of the American economy, while pressing Congress to take additional action regardless of projections. He also urged Congressional Leadership not to worry about debt and deficits in this time or need stating:

"We've always looked at debt to GDP, and we're very high by that measure. By some other

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

Bond Dealers of America

December 18, 2020

[Republican Bid to End Virus Lending Slows Relief Deal.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg

By Laura Davison, Saleha Mohsin, and Catarina Saraiva

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

— With assistance by Erik Wasson

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Fed may yet have to take additional measures to prop up the U.S. economy. There could come a time when long-term yields rise to a level that the central bank sees as detrimental to a full recovery.

But it’s not when 10-year Treasuries are at less than 1%. Powell isn’t going to get caught pushing on a string.

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

Bloomberg Opinion

By Brian Chappatta

December 16, 2020, 1:15 PM PST

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

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

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

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

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

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

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

The program combines a long-established tax and a novel service contract mechanism to create a strong, high-grade credit.

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

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

The other Deal of the Year finalists were:

Midwest Region

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

Southwest Region

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

Northeast Region

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

Southeast Region

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

Health Care Financing

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

ESG/Green Financing

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

Public-Private Partnership Financing

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

Small Issuer Financing

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

Innovative Financing

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

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

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

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

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

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

Contact
Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Janet Rosen
Analytical Consultant
+1 312-368-3172

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

Additional information is available on www.fitchratings.com

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

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

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

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

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

Contact:

Tim Morilla
Director
+1-512-813-5702
Fitch Ratings, Inc.
2600 Via Fortuna, Suite 330
Austin, TX 78746

Major Parkhurst
Director
+1-512-215-3724

Julie Garcia Seebach
Director
+1-512-215-3743

Doug Scott
Managing Director
+1-512-215-3725

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

Additional information is available on www.fitchratings.com

Fitch Ratings Updates Completion Risk Criteria.

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

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

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

Contact:

Michella Michels
Director
+55 11 4504 2601

Fitch Ratings Brasil Ltda.
Alameda Santos, n 700 – 7 andar Edificio Trianon Corporate Cerqueira Cesar
Sao Paulo – SP 01.418-100

Christiane Kuti
Director
+44 (0) 20 3530 1396

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

Additional information is available on www.fitchratings.com

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

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

Revised baseline GDP assumptions for the FAST States & Locals – Fitch Analytical Stress Test Model (FAST) model are for a 3.5% decline in year one, reflecting actual performance in 2020 to date, followed by growth of 4.5% and 3.5% in years two and three, respectively. In the new baseline scenario, real GDP recovers to 4Q19 levels in the 3Q21. Inflation assumptions remain zero in year one and 2% in years two and three. Even as fiscal 2020 actual financial results for issuers become available (fiscal years ended June 30), Fitch will continue to utilize the year one revenue decline estimate in its analysis as the full revenue impact from the pandemic-fueled economic dislocation continues to take shape. In addition, revenues for most issuers were enhanced by direct and indirect federal stimulus and generally good performance in the first three quarters of the fiscal year. While an incremental $1 trillion in federal stimulus is assumed in the economic outlook for the U.S., Fitch's ratings do not incorporate an expectation for additional federal stimulus aid directly to states and local governments.

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

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

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

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
300 West 57th Street
New York, NY 10019

Eric Kim
Senior Director
+1-212-908-0241

Michael Rinaldi
Senior Director
+1-212-908-0833

Arlene Bohner
Managing Director

+1-212-908-0554

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

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

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

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

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

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

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

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

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

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

Contact:

Arlene Bohner
Managing Director, Head of US Public Finance
+1 212 908-0554
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Amy Laskey
Managing Director, US Public Finance
+1 212 908-0568

Eric Kim
Senior Director, US Public Finance
+1 212 908-0241

Emily Wadhwani
Director, US Public Finance
+1 312 368-3347
Fitch Ratings, Inc.
One North Wacker Drive
Chicago, IL 60606

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

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

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of

Fitch Ratings.

[Fitch: Employment Growth Slowing for U.S. States]

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

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

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

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

Contact:

Olu Sonola, CFA
Senior Director
+1 212 908 0583
Fitch Ratings, Inc.
300 W. 57th St.
New York, NY 10019

Arthur Tildesley, CFA
Associate Director
+1 646 582 4749

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

Additional information is available on www.fitchratings.com

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

Fitch's Sector Outlook: Stable Fitch Ratings' 2021 stable outlook for the U.S. water and sewer sector (the sector) reflects strong sector characteristics and a conservative business model that provides utilities with stability, even during periods of uncertainty and volatility. The fundamental hallmarks of the sector include: essentiality of service, lack of competition and generally autonomous rate-making authority. These underpinning strengths continue to produce favorable financial results and reliable cashflows even in the current environment. Rating Outlook: Stable The rating outlook for the sector is Stable, and only limited rating changes are expected in 2021. As of December 2020, 88% of the water and sewer ratings assigned by Fitch maintained a Stable Rating Outlook. Approximately 8% have a Positive Rating Outlook or are on Rating Watch Positive, and 3% have a Negative Rating Outlook or are on Rating Watch Negative. Ratings trending positive are dominated by utilities with improving leverage profiles. Conversely, ratings trending negative are predominantly driven by utilities with rising leverage as a result of increasing operating or capital expenses without offsetting rate support.

ACCESS REPORT

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

Table of Contents

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

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

Continue reading.

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

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

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

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

Continue reading.

15 Dec, 2020

Municipal Volumes Cut in Half from October to November.

Read the Press Release.

DECEMBER 15TH, 2020

Moody's Talks - Outlook Connections Podcast Series

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

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

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

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

Listen to the Podcast.

[Migration to Low Tax States and the Muni Market.]

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

[Watch.]

Bloomberg Markets

December 17th, 2020

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

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

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

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

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

[Continue reading.]

Bloomberg Business

By Molly Smith and Danielle Moran

December 17, 2020, 4:31 AM PST

[SEC Proposes Amendments to Reg ATS for Government Securities ATSs.]

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

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

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

Continue reading.

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

December 17 2020

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

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

Video Transcript

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

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

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

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

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

So it may not have a very big impact if the MLF does expire at the end of the year, at least that's our thinking. If we get a second shutdown and we begin to see a big economic drag perhaps in the first quarter, I think there's always a possibility that that liquidity facility could come back, be bought back. But right now, we don't view it as having a big impact on the market should it expire at the end of this month.

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

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

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

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

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

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

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

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

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

SEANA SMITH: So Peter, then, going off of that and taking a look at the past performance, I know the longer term in the lower credit quality assets have been the stronger performers, but what's your recommendation looking out 6 to 12 months? How should investors be positioned at this point?

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

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

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

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

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

PETER HAYES: Thank you for having me.

Yahoo Finance

December 15, 2020

Providence Pension Could Bankrupt Rhode Island City.

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

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

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

Continue reading.

Forbes

by Edward Siedle

Dec 16, 2020

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

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

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

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

Continue reading.

National Real Estate Investor

John Egan | Dec 07, 2020

MSRB Seeking Applications for Governing Board.

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

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

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

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

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

Learning Objectives:

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

- Identify the appropriate benchmark interest rates to be used with derivatives.

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

REGISTER

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

SUMMARY

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

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

Read the Letter.

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

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

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

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

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

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

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

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

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

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

December 18 2020

TAX - MICHIGAN

[City of Grand Rapids v. Brookstone Capital, LLC]

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

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

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

The Court of Appeals held that:

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

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

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

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

Doctrine of in pari materia did not apply, and could not reconcile, city's payments in lieu of taxes ordinance and section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects, which otherwise preempted the ordinance, since the ordinance, which required payments in lieu of taxes by a housing project owner in the amount of 4% of annual total collections from all occupants of housing project exclusive of charges for utilities, and the MSHDA section, which commanded city to charge fees in lieu of taxes equal to the ad valorem tax for portions of projects occupied by "other than low income persons and families," both lacked ambiguity.

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

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

SUMMARY BY TAX ANALYSTS

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

FULL TEXT PUBLISHED BY TAX ANALYSTS

December 2, 2020

David J. Kautter
Assistant Secretary
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Krishna Vallabhaneni
Tax Legislative Counsel
United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington, DC 20220

Re: IRS Review of Regulatory and Other Relief to Support Economic Recovery

Messrs. Kautter, Desmond and Vallabhaneni:

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

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

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

Sincerely,

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

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

cc:
Helen M. Hubbard, Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service
Melissa Moye, Director, Office of State and Local Finance, U.S. Department of the Treasury
Johanna Som de Cerff, Acting Branch Chief, Internal Revenue Service
Zoran Stojanovic, Assistant to the Branch Chief, Internal Revenue Service
Timothy Jones, Office of the Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service
David White, Office of the Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service
Brett York, Acting Deputy Tax Legislative Counsel, U.S. Department of the Treasury

Background Relating to Tax-Exempt Bond Provisions of IRS Notice 2020-53

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

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

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

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

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

Recommendation

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

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

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

1. For purposes of Section 5.02 of Revenue Procedure 2004-39, the last day of a 12-month transition

period for a qualified residential rental project that ends on or after April 1, 2020 and before December 31, 2021 is postponed to December 31, 2022; and

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

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

APPENDIX A
NABL AD HOC TASKFORCE MEMBERS

Antonio D. Martini, Chair
Hinckley, Allen & Snyder LLP
28 State Street
Boston, MA 02109-1775
Telephone: 617-378-4136
Email: amartini@hinckleyallen.com

Christie L. Martin
Mintz Levin Cohn Ferris Glovsky and Popeo P.C.
1 Financial Center
Boston, MA 02111-2621
Telephone: 617-348-1769
Email: clmartin@mintz.com

Brian P. Teaff
Bracewell LLP
711 Louisiana Street
Suite 2300
Houston, TX 77002-2770
Telephone: 713-221-1367
Email: brian.teaff@bracewell.com

Matthias M. Edrich
Kutak Rock LLP
1801 California Street
Suite 3000
Denver, CO 80202-2626
Telephone: 303-292-7887
Email: matthias.edrich@kutakrock.com

FOOTNOTES

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

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

3Although the focus of this submission is concentrated on the tax-exempt bond aspects of IRS Notice 2020-53, affecting compliance under Sections 142(d) and 147(d) of the Code, we observe that IRS Notice 2020-53 also provides relief with respect to a number of compliance matters under Section 42(d) of the Code. For example, IRS Notice 2020-53 states that, between April 1, 2020 and December 31, 2020, owners of "qualified low-income housing projects" (as such term is defined in Section 42(d) of the Code) are not required to perform certain income re-certifications or reduce the eligible basis in a building because of the temporary closure of an amenity or common area due to the COVID-19 Outbreak and that state agencies that have jurisdiction over such projects are not required to conduct compliance-monitoring. Additionally, pursuant to IRS Notice 2020-53, between April 1, 2020 and December 31, 2020, owners and operators of qualified low-income housing projects, bond issuers and state agencies are permitted to treat medical personnel and other essential workers providing services during the COVID-19 Outbreak as if they were "displaced individuals" within the meaning of Revenue Procedures 2014-49 and 2014-50, which in turn facilitates the use of qualified low-income housing projects to provide emergency housing for such essential personnel.

END FOOTNOTES

Bond Lawyers Seek COVID-19 Relief Extension.

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

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

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

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

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

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

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

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

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

TAX ANALYSTS

by FRED STOKELD

POSTED ON DEC. 9, 2020

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

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

Listen to audio.

Bloomberg Radio

December 18, 2020

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

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

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

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

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

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

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

The pandemic has been particularly hard on Manhattan cultural institutions that had to close their doors and face the prospect of a tough winter, with New York City Mayor Bill de Blasio warning this week that there could be another shutdown after Christmas. The Whitney, which reopened in September with capacity limited to 25%, is expecting a cash operating deficit of up to $4.5 million for fiscal 2021, according to bond documents.

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright and Fola Akinnibi

December 16, 2020, 10:43 AM PST

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

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

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

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

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

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

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

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

Bloomberg Markets

By Michelle Kaske

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

Rich States Uncover Tax Windfall, Undercutting Push for Aid.

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

It was a shocking, and seemingly improbable, figure.

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

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

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

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

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

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

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

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

State bond yields retreat to pre-pandemic lows

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

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

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

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

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

Internet Sales

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

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

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

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

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

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

Bloomberg Politics

By Romy Varghese and Amanda Albright

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

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

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

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

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

QOZs: A Background

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

Continue reading.

Forbes

by David Wieland

Dec 1, 2020

[Leveraging Development Finance Tools to Attract Opportunity Zone Investment.]

[Read the CDFA document.]

[How to Make Communities Part of the Opportunity Zone Equation.]

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

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

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

Continue reading.

NEXT CITY

EMILY NONKO DECEMBER 17, 2020

[Orrick Webinar: Healthcare Finance: A Look Ahead to 2021]

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

[Listen to the Webinar.]

The Bond Buyer | December.14.2020

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

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

Background

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

Appellate Court Opinion

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

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

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

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

Nossaman LLP – Jillian Friess

December 18 2020

[Workforce Housing in Opportunity Zones, with Riaz Taplin.]

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

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Opportunity Db

December 16, 2020

BDA 2021 Policy Focus.

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

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

2021 Federal Policy Focus:

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

We look forward to representing you in the new year!

Bond Dealers of America

December 16, 2020
