

Bond Case Briefs

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Agencies Provide Temporary Relief to Community Banking Organizations.

The federal bank regulatory agencies on Friday announced an interim final rule that provides temporary relief for certain community banking organizations related to certain regulations and reporting requirements as a result, in large part, of their growth in size from the coronavirus response.

Community banking organizations are subject to different rules and requirements based on their risk profile and asset size. Due to participating in federal coronavirus response programs—such as the Paycheck Protection Program—and other lending that supports the U.S. economy, many community banking organizations have experienced rapid and unexpected increases in their sizes, which are generally expected to be temporary. The temporary increase in size could subject community banking organizations to new regulations or reporting requirements.

With regard to the requirements covered by the interim final rule, community banking organizations that have crossed a relevant threshold generally will have until 2022 to either reduce their size, or to prepare for new regulatory and reporting standards. The rule applies to community banking organizations financial institutions with less than \$10 billion in total assets as of December 31, 2019. Community banking organizations with under \$10 billion in assets may have fewer resources available to prepare and comply with previously unanticipated regulatory requirements, especially during a time of economic disruption.

The rule will be effective immediately upon publication in the Federal Register, and comments will be accepted for 60 days after publication in the Federal Register.

[Federal Register notice: Temporary Asset Thresholds \(PDF\)](#)

November 20, 2020

IRS Releases UBTI Calculation Regs for Exempt Orgs.

Treasury and the IRS have released final regulations on calculating the unrelated business taxable income of tax-exempt organizations.

The final regs ([T.D. 9933](#)) issued November 19 address section 512(a)(6), a Tax Cuts and Jobs Act provision that requires exempt organizations with more than one unrelated trade or business to calculate UBTI separately for each one. The regs provide guidelines for identifying separate UBTI and explain when EOs can treat investment activities as one unrelated trade or business when computing UBTI.

The final guidance adopted some clarifications provided in the proposed regs ([REG-106864-18](#)) without change. Those clarifications involve the section 513(b) definition of unrelated trade or business applying to individual retirement accounts and the inclusions of subpart F and global

intangible low-taxed income being treated in the same manner as dividends when determining UBTI.

UBTI Calculation Regs Reflect Public Input.

Guidance from the IRS and Treasury to help tax-exempt organizations calculate unrelated business taxable income if they have more than one unrelated trade or business adopts many suggestions offered in public comments.

The final regulations (T.D. 9933), released November 19 ahead of official publication in the Federal Register, address section 512(a)(6), a Tax Cuts and Jobs Act provision that requires exempt organizations with multiple unrelated trades or businesses — silos — to calculate UBTI separately for each one.

The final regs explain how an EO can determine if it has more than one unrelated trade or business and, if it does, how to calculate its UBTI.

“The IRS should be commended for its speedy efforts in issuing final guidance on 512(a)(6), along with their level of consideration given to the 17 comments submitted in response to the proposed regulations,” Meghan R. Biss of Caplin & Drysdale Chtd. told Tax Notes.

The preamble to the final regs discusses reducing the administrative burden on organizations and the IRS by adopting bright-line rules, Biss noted.

“In doing so, I believe that the IRS is taking into account how it will enforce these rules,” Biss said. “To me, the rejection of facts and circumstances is an indication that they want agents to avoid the enforcement difficulties posed in other EO areas that rely solely on a facts and circumstances test.”

NAICS Codes

The final regs retain the proposed regs’ (REG-106864-18) provision requiring an EO to identify each of its separate unrelated trades or businesses by using the first two digits of the North American Industry Classification System (NAICS) code that most accurately describes the unrelated trade or business.

The determination is based on the more specific NAICS code that describes the organization’s activity, and the descriptions in the current NAICS manual of trades or businesses using more than two digits of the NAICS codes are relevant in making that determination, according to the preamble.

In response to comments, the final rulemaking incorporates a NAICS rule for identifying particular industries and provides that when there are sales of goods both online and in shops, the separate unrelated trade or business is identified by the goods sold in shops if the same goods generally are sold online and in stores.

If an EO concludes that its trade or business activities would be most accurately described by different NAICS two-digit codes, the activities should be identified that way and treated as separate unrelated trades or businesses, according to the final regs.

Like the proposed rulemaking, the final regs say the NAICS two-digit code has to identify the separate unrelated trade or business in which the EO directly or indirectly engages. It may not describe activities substantially related to accomplishing the organization’s exempt purpose.

The final regs, in response to comments, eliminate the restriction on changing NAICS two-digit codes. An organization that changes the identification of a separate unrelated trade or business must report the modification in the tax year of the change in accordance with forms and instructions.

IRAs, Subpart F Income

The final regs adopt the proposed rulemaking's clarification that the definition of unrelated trade or business applies to IRAs.

Likewise, the proposed regs' clarification that inclusions of subpart F income and global intangible low-taxed income are treated the same way as dividends for purposes of determining UBTI is retained in the final rulemaking.

Net Operating Losses

An EO with more than one unrelated trade or business will determine the net operating loss deduction separately for each of its unrelated trades or businesses, according to the final regs. They also provide that reg. section 1.512(b)-1(e), which addresses the application of section 172 in the context of UBIT, applies separately for each such unrelated trade or business.

The final regs say an organization with losses in a tax year beginning before January 1, 2018, and in a tax year starting after December 31, 2017, will deduct its pre-2018 NOLs from total UBTI before deducting any post-2017 NOLs regarding a separate unrelated trade or business against the UBTI from such trade or business. The IRS and Treasury rejected a commentator's request to permit an EO to choose the order in which it uses pre-2018 and post-2017 NOLs based on its own facts and circumstances.

The final regs clarify that pre-2018 NOLs are taken against the total UBTI in a way that allows for maximum use of post-2017 NOLs, rather than pre-2018 NOLs, in a tax year.

"For example, the final regulations further clarify that an exempt organization may allocate all of its pre-2018 NOLs to one of its separate unrelated trades or businesses or it may allocate its pre-2018 NOLs ratably among its separate unrelated trades or businesses, whichever results in the greater utilization of the post-2017 NOLs in that taxable year," the preamble explains.

The final rulemaking also provides that after offsetting any gain from terminating, selling, exchanging, or otherwise disposing of a separate unrelated trade or business, any remaining NOL is suspended.

But the suspended NOLs may be used if the previous separate unrelated trade or business later resumes or if a new unrelated trade or business that is accurately identified using the same NAICS two-digit code as the previous separate unrelated trade or business begins or is acquired in a future tax year, according to the preamble.

In response to six commentators, the final regs provide that for purposes of section 512(a)(6), a separate unrelated trade or business that changes identification is treated as if the originally identified separate unrelated trade or business is terminated and a new separate unrelated trade or business begins.

Therefore, none of the NOLs from the previously identified separate unrelated trade or business will be carried over to the newly identified separate unrelated trade or business, the preamble explains.

The change in identification may apply to all or a part of the originally identified separate unrelated trade or business. If the change applies to the originally identified separate trade or business

entirely, any NOLs attributable to that separate unrelated trade or business are suspended, the final regs say.

If the change in identification applies to the originally identified separate unrelated trade or business in part, the originally identified separate unrelated trade or business that remains unchanged keeps the entire NOLs attributable to it, including the part for which the identification is changing.

Investment Activities

Despite pleas from some commentators, the final regs, like the proposed version, treat an EO's investment activities that are subject to UBIT as a separate unrelated trade or business for purposes of section 512(a)(6).

Regarding specified payments from controlled entities, the IRS and Treasury adopted the language in the proposed regs without change, rejecting the suggestion that all specified payments be treated as one unrelated trade or business for purposes of section 512(a)(6).

Qualified Partnership Interest

The final regs rejected commentators' recommendations of alternative or additional methods for identifying a qualified partnership interest (QPI).

The rulemaking adopts the proposed regs' position that once an organization designates a partnership interest as a QPI, it can't subsequently identify the trades or businesses conducted by the partnership that are unrelated trades or businesses regarding the EO using NAICS two-digit codes unless and until the partnership interest stops being a QPI.

In response to a commentator, the final regulations clarify that if an organization whose interest must be considered when determining the EO's percentage interest for purposes of the first prong of the control test is a general partner in a partnership in which an EO holds an interest, that interest is not a QPI.

Regarding the first prong of the control test, the final regs keep the 20 percent capital interest threshold of the proposed regs. However, they make clear that the EO must satisfy the percentage interest requirement for its tax year with which or in which the partnership's tax year concludes.

TAX ANALYSTS

by FRED STOKELD

POSTED ON NOV. 20, 2020

[Regulator Joint Statement Highlights Need to Move on from LIBOR \(But For Some, Not Necessarily to SOFR\) - McGuireWoods](#)

On November 6, 2020, Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") issued a joint "[Statement on Reference Rates for Loans](#)" (the "Joint Statement").

The Takeaway: You don't have to go to SOFR, but you can't stay here. The Agencies expect banks

to include fallback language in existing LIBOR loan contracts and “begin transitioning loans away from LIBOR without delay,” but recognize that the “use of SOFR is voluntary” and that a more credit sensitive alternative may be more appropriate for some banks. Although the Agencies have recognized the desire by some banks for a more credit-sensitive alternative to SOFR as a replacement for LIBOR, they have also been clear that they won’t be recommending any particular credit sensitive alternative, in contrast to the ARRC’s recommendation of SOFR. The Agencies note that “[b]anks should assess the appropriateness of alternative reference rates in light of their funding costs and their customers’ needs.” So while money center banks and syndications markets continue to trend towards SOFR, the Agencies have made clear that banks in other market segments have regulatory leeway to continue to evaluate other options and alternatives.

But why might SOFR not fit all shapes and sizes?

Stress Test:

The Joint Statement foregrounds an ongoing undercurrent of discussions by some banks focused on potential issues with SOFR as an index rate in times of economic stress. In a September 23, 2019 [letter to the Agencies](#), a group of banks highlighted the squeeze that many banks would feel during times of economic stress with a portfolio of SOFR indexed loans:

- LIBOR is an unsecured credit sensitive rate, so that in times of economic distress, as the cost of funds for banks rise, the yield on banks’ portfolio of LIBOR indexed loans also rises; thus, with LIBOR indexed loans, bank lending and borrowing rates tend to move in concert; HOWEVER
- SOFR is a secured nearly “risk free rate” (overnight rate for borrowing secured by U.S. Treasury securities), and as such during times of economic distress, “SOFR (unlike LIBOR) will likely decrease disproportionately relative to other market rates as investors seek the safe haven of U.S. Treasury securities.”

With a portfolio of SOFR based loans, banks will bear the risk that in times of economic distress, their cost of funds will go up but interest income will go down, squeezing banks’ net interest income. The tendency of borrowers to draw down credit lines and hoard cash during economic crisis amplifies the potential problem.

Credit Sensitivity Group:

The Agencies responded to that letter by organizing a Credit Sensitivity Group (“CSG”), which conducted four workshops over the summer (June 4, 2020, July 22, 2020, August 12, 2020 and August 27, 2020) to vet and discuss the issue, summaries of which can be found [here](#). Additional working sessions are scheduled for November 18, 2020 and a TBD December date to continue discussions around developing a credit sensitive component to help address the disconnect between SOFR and bank cost of funds under conditions of economic distress. However, in a [public letter](#) from the Agencies on October 21, 2020 and in advance of the next CSG working sessions, the Agencies made clear that “the official sector does not plan to convene a group to recommend a specific credit-sensitive supplement or rate for use in commercial lending products.”

Challenges to Credit Sensitivity / “Dynamic” Spreads:

Constructing a “dynamic” adjustment to SOFR to account for ongoing changes in credit quality was weighed by the ARRC early on, but discarded in favor of the currently recommended “static” spread adjustment added to SOFR to approximate LIBOR (i.e., a spread determined and fixed at the point in time that LIBOR is discontinued). In electing to go with a static spread adjustment, the ARRC recognized that dynamic spread adjustment formulations suffer many of the same IOSCO

compliance problems as LIBOR itself: (a) limited transactions in normal times that could be used to calculate the spread adjustments, (b) even more limited transactions in periods of stress and (c) an unstable sample of firms that borrow in unsecured wholesale markets, resulting in borrower-based variability. Nevertheless, market participants continue to explore ways mitigate the risks posed by SOFR movement during economic stress.

As the clock winds down on LIBOR, ISDA rolls out its [IBOR Benchmark Fallback Protocols](#) for swaps and the syndicated loan market moves toward [hardwired fallbacks to SOFR](#), the demand by some banks for a more credit-sensitive alternative to LIBOR continues to generate both discussion and recognition by the Agencies.

By Donald A. Ensing & Susan Rodriguez on November 18, 2020

McGuireWoods LLP

[The Transition Out of LIBOR: What State and Local Governments Should be Discussing with Their Financing Teams](#)

The London Interbank Offered Rate (LIBOR) is a global benchmark interest rate calculated daily, and is the most widely used benchmark in the capital markets. State and local governments often see this rate in swaps/derivatives products intertwined with municipal debt, as well as in floating rate notes, lease contracts, bank loans, direct placements, and other types of financings and credit enhancements.

[LIBOR will be phased out over the rest of 2020 and on December 31, 2021, will cease publication.](#) Therefore, state and local governments need to know that existing contracts that reference LIBOR will need to be revised to perform as intended and new contracts will have to reference a new benchmark, such as the [Secured Overnight Financing Rate \(SOFR\)](#).

The Federal Reserve along with the Federal Reserve of New York, has established a working group with GFOA and other stakeholder groups - the [Alternative Reference Rates Committee \(ARRC\)](#) - to ensure a transition for the financial markets from LIBOR to a new rate, the Secured Overnight Financing Rate (SOFR). In some cases, state and local governments may see other rates used for some financing products.

To help governments best understand and address these changes, below are a list of questions that you should discuss with your financing team to ensure that as new benchmark rates take hold, these changes do not trigger rate revisions or other provisions that cause a financial disruption to the government/government entity.

Questions Issuers Should Ask Internal and External Finance Team

Does my jurisdiction have any LIBOR exposure?

Review contracts to identify contract terms and what exposure the government has with the impending change in the reference rate, LIBOR. Identify entity's outstanding/legacy financial products that may be predicated on the LIBOR rate:

- Swaps/derivatives

- Floating rate notes
- Bank loans
- Direct placements
- Letters of credit
- Purchasing cards
- Lease Contracts
- Investment Products, including Guaranteed Investment Products (GICs)

What do I do if I find LIBOR referenced?

Discuss with finance team – including counsel, swap advisor, and municipal advisor – the changes that may need to occur in these legacy contracts. Most swap/derivatives contracts are based on the standard terms contained in the [International Swaps and Derivatives Association \(ISDA\) Master Agreement](#) and related documents. The ISDA Master also contains a [Fallback Protocol](#), which was recently revised and released on October 23, 2020. Discussing the new protocol with your Qualified Independent Representative (QIR) and your financing team is essential for your governmental entity. Members are encouraged to adhere to the protocol to modify contracts to reflect the change from LIBOR to SOFR or other rate using the ISDA LIBOR Fallbacks Protocol. NOTE that the fallback protocol includes a provision for ISDA to issue a “cutoff date.” Failure to adhere in a timely manner will result in unnecessary complications.

In bank loans and direct placements, discuss with the bank/counterparty the replacement rate that will be used for these contracts and request to review with the bank/counterparty any financial penalties that could occur.

Governments may also have investments that are tied to LIBOR rates. Members should review investments and discuss any that do reference LIBOR with your financing team, including investment adviser.

What else should I think about if I find LIBOR referenced and need to make changes to my contract?

If approval from a governing body is needed to make changes with the contract, allow enough lead-time to have the contract reviewed and suggested changes made by members of the finance team to the governing body for approval.

How do I report the transition from LIBOR on my financial statements?

Identify any accounting matters, such as [GASB 93](#) that need to be addressed when making changes to the contract and the reference rate. Governments should address these and other accounting and financial reporting implications that result from the replacement of an IBOR.

Is this a material event that should be disclosed?

Discuss with bond counsel/disclosure counsel if contract changes trigger a material event filing or if the entity should submit a voluntary disclosure filing in EMMA regarding contract changes away from LIBOR.

What else should I ask if the exposure originates back over a decade?

Some contracts may be in place that pre-date the passage of the Dodd Frank Act in 2010 that now requires, under [Commodity Futures Trading Commission \(CFTC\) rules](#), that state and local governments and entities to use a [Qualified Independent Representative \(QIR\)/Swap Advisor](#) when

engaging in derivative products. Governments need to have a QIR in place to assist them with some legacy transactions if changes are made, and for any new swap transactions.

Should I engage any professional particularly suited to assist?

When discussing derivative and swap transactions with the entity's municipal advisor, ensure that the municipal advisor is qualified and understands the breadth of this market. Governments may need to engage the services of a swap advisor (QIR) to assist them with these transactions, which could be a different party than the entity's municipal advisor.

While the Department of the Treasury and IRS has provided guidance that changing LIBOR to SOFR in a financing does not constitute a new bond issuance, governments should discuss contract changes with bond counsel/tax counsel to address tax integration matters and ensure there are no federal tax compliance concerns.

What should I do if my entity will be engaging in a transaction within the next year?

When looking to engage in NEW swaps/derivatives, floating rate note transactions, bank loans or direct placements, discuss with your financing team and counterparties what reference rate will be used in the contract. Governments are advised to NOT accept continued use of LIBOR in new contracts, which could trigger the need for changes after 2021 and with that, possible additional fees.

Government Finance Officers of America

[IRS PLR: City's Geographic Boundaries Constitute Qualified Service Area](#)

The IRS ruled that the entire geographic area of a city is a qualified service area of its public utilities commission within the meaning of section 141(d)(3)(B)(i) but expressed no opinion on whether the interest on bonds used to finance the city's plan to provide retail electric service will be tax-exempt.

[Read the IRS Private Letter Ruling.](#)

Citations: LTR 202046004

[IRS PLR: Renewable Energy Facility Is Not Public Utility Property](#)

The IRS ruled that the portion of a public utility's photovoltaic array built on a customer's land that is the dedicated renewable energy facility serving that customer will not be public utility property within the meaning of section 168(i)(10) and former section 46(f)(5).

[Read the IRS Private Letter Ruling.](#)

Citations: LTR 202047004

Stakeholders Expect Next DOT Secretary to Have a Muni Edge.

Municipal bond market participants want the next U.S. Secretary of Transportation to have more issuer experience and understand the inner workings of the muni bond market.

Many candidates on the table for the next Secretary of Transportation have experience as issuer officials or as legislators dealing with tax issues, which gives localities some comfort.

“When you look at a potential new transportation secretary who has issued general obligation debt or any other creative structures to make infrastructure, rail and roads happen in their region, it’s satisfying because we won’t have to start from square one when talking about the market and instead you’re starting from square three and you’re moving forward and beyond,” said Emily Brock, director of the Government Finance Officers Association’s federal liaison center.

Multiple media outlets have reported Los Angeles Mayor Eric Garcetti, Rep. Earl Blumenauer, D-Ore., and former Chicago Mayor Rahm Emanuel as top contenders for the post.

They bring something new to the table, Brock said.

Biden could announce his pick in the next few weeks. President Trump has not conceded electoral defeat, though the Associated Press and other organizations have declared Biden the presumptive winner.

Current Secretary Elaine Chao was appointed by President Trump in 2016 and was the U.S. Secretary of Labor from 2001 to 2009. Though she does have a significant transportation background, the potential for local leaders to have experience in issuing general obligations is helpful, Brock said.

Blumenauer can be a strong advocate for municipal bonds if picked by President-elect Joe Biden. He was a county commissioner and member of the Portland City Council before being elected as a congressman in 1996. He is currently a member of the House Ways and Means Committee. He also was on the House Transportation and Infrastructure Committee for almost 10 years.

“(Blumenauer) has been a longtime supporter of bonds, from Plain Jane vanilla bonds to private activity bonds,” Brock said. “So he understands the different tools in the tool kit. That would be incredibly useful. On the other hand, someone like Garcetti or Rahm could understand conceivably the GO and how it’s used and specifically with regards to transportation.”

Biden plans to invest \$1.3 trillion dollars over the next 10 years in infrastructure, with a heavy stated focus on resiliency.

“Every federal dollar spent on rebuilding our infrastructure during the Biden Administration will be used to prevent, reduce, and withstand the impacts of this climate crisis,” according to Biden’s plan. “If we transform our modes of transportation and the sources of energy that power them, we can make real progress toward reducing our greenhouse gas emissions.”

Brock expects partnerships between local and federal governments to achieve those climate initiative goals.

Marion Gee, finance director at the Metropolitan St. Louis Sewer District and GFOA president, wants to see proposals for grant funding to help localities build resilient infrastructure.

“It will be difficult from a municipalities’ stance to do these projects on a standalone basis, so they’re

going to need federal support to build those kinds of projects,” Gee said.

Gee hopes that the next transportation secretary will be an advocate for reinstating tax-exempt advance refunding to help fund future infrastructure projects. Tax-exempt advance refunding was taken away during the 2017 Tax Cuts and Jobs Act.

Last week, the Public Finance Network released a report on the benefits of tax-exempt advance refunding. The National Association of Counties, a PFN member, said pandemic effects on counties’ finances would be helped by bringing back advance refunding. NACo plans to work with the next Congress on that issue.

“As described in this new resource, reinstating advance refunding of municipal bonds would improve state and local governments’ ability to invest in critical infrastructure projects, such as hospitals and other health facilities, schools, roads, bridges, water and sewer systems ports, airports and other public works,” NACo said on Monday.

NACo Associate Legislative Director Jessica Jennings wants the next transportation secretary to understand the role counties play in national transportation, adding that counties directly support 78% of public transit and 45% of public roads.

“That’s obviously a huge stake in the national system so having a secretary that understands that and realizes how important the local level is and what we’re doing is really what we need,” Jennings said. Jennings wants direct funding from the U.S. DOT instead of state DOTs.

Jennings also wants to see a fix to the depleted Highway Trust Fund. Biden has said he plans to stabilize it and ensure new revenues, according to his infrastructure plan.

The HTF is in need of funds as it runs mostly on gas taxes while also receiving money from Treasury general funds under existing legislation. Shortfalls in the funds have been filled by transfers totaling \$144 billion since 2008, according to the Peter G. Peterson Foundation, a non-partisan research organization.

Highway, transit and airport grant programs run by the U.S. DOT is often used as seed money for issuers and can be leveraged with bond proceeds in order to raise money for infrastructure projects, said Michael Decker senior vice president of policy and research at Bond Dealers of America.

“It’s important that the secretary is committed to those programs, that they are committed to the success and proliferation of those programs and there are going to be opportunities under the next administration to expand some of the transportation-related initiatives that already exist,” Decker said.

One of those programs is the Transportation Infrastructure Finance and Innovation Act, which provides long-term, low-interest loans and other types of credit assistance for constructing surface transportation projects.

In July, Rep. John Garamendi, D-Calif., introduced the TIFIA for Airports Act. In 2019, Sens. Tammy Duckworth, D-Ill., and David Perdue, R-Ga., released a similar bill.

The next secretary could be a leader in expanding TIFIA, Decker said.

Other initiatives on the table are municipal provisions in the House’s Moving Forward Act. The House passed its infrastructure bill, which was folded into the larger Moving Forward Act in July 2020. That bill includes a series of taxable direct-pay bonds and a restoration of tax-exempt advance

refunding.

“There are a lot of initiatives on the table in the context of the transportation bill where Congress’ action could be really helpful and I hope that the next Secretary of Transportation would be an advocate for those kinds of changes,” Decker said.

The National Association of State Treasurers is also hopeful the next secretary will be a strong federal partner.

“States need the tried and true tools to continue financing the lion’s share of America’s infrastructure, but we also need a stronger federal partner and additional federal funding in the mix if we are ever truly going to tackle our infrastructure deficit,” said Brian Egan, NAST’s policy director.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11/17/20 01:44 PM EST

[Public Infrastructure/Private Service Model For 21st Century Broadband Proves Worthy.](#)

The emerging model presents a scalable option for communities that lack the expertise or interest to operate networks or act as ISPs themselves but want to own and control the core communications assets in their communities as a means of securing the benefits of broadband internet. Here’s a look at the model’s business case, technical elements and risks.

Broadband networks rank among the most important infrastructure assets of our time - for purposes of economic development and competitiveness, innovation, workforce preparedness, health care, education, and environmental sustainability. The criticality of broadband was illustrated when the COVID-19 pandemic shut down the U.S. economy. Households with fast connections were able to continue working and attending classes online. Unconnected households found themselves more cut off than ever.

If there was ever any doubt about the centrality of broadband to the national interest, the devastating pandemic erased this doubt. Yet the United States faces persistent gaps in broadband availability and affordability - as well as a troublingly noncompetitive broadband ecosystem in which most communities are served by only one or, at best, two high-speed broadband providers.

[Continue reading.](#)

Broadband Communities

By Joanne Hovis, Jim Baller, David Talbot and Cat Blake

November/December 2020

[EPA Receives 67 New Requests for WIFIA Financing.](#)

This year's requests - totaling over \$9 billion - are the largest ever for the program.

The U.S. Environmental Protection Agency (EPA) has received 67 letters of interest in response to the agency's 2020 Water Infrastructure Finance and Innovation Act (WIFIA) Notice of Funding Availability. A total of \$9.2 billion was requested this year—the largest amount ever requested through the WIFIA program.

"These letters show the incredible interest in the financial support that the WIFIA program provides to communities that are upgrading their water infrastructure," said EPA Administrator Andrew Wheeler.

Consistent with the agency's 2020 appropriation, EPA is offering approximately \$5 billion in WIFIA loans to help finance more than \$10 billion in water infrastructure projects. The agency received letters of interest from prospective borrowers located in 24 states, including six states that are seeking WIFIA loans for the first time. With these letters of interest, borrowers in 41 states, plus the District of Columbia and Guam, have requested WIFIA loans. Since the program began in 2017, EPA has received requests totaling over \$30 billion. Since closing the first loan in 2018, EPA has closed 40 WIFIA loans that are providing \$7.7 billion in credit assistance to help finance \$16.6 billion for water infrastructure while creating more than 38,200 jobs and saving ratepayers \$3.6 billion.

The 2020 letters of interest cover a wide variety of water infrastructure needs, including reducing lead and emerging contaminants and supporting wastewater management, drinking water quality, desalination, stormwater management, and combined approaches. Prospective borrowers include municipal government agencies—such as four small communities—corporations, and public-private partnerships. As the next step in this competitive process, EPA will evaluate the letters for project eligibility, creditworthiness, engineering feasibility, and alignment with WIFIA's statutory and regulatory selection criteria. This winter, the agency will identify projects it intends to finance and invite those selected entities to submit formal applications.

EPA's WIFIA program continues to provide financial support at a critical time as the federal government, EPA, and the water sector work to help mitigate the public health and financial impacts of COVID-19. Since March 2020, WIFIA has announced 24 loans and updated seven existing loans with lower interest rates. These recent announcements will save ratepayers over \$1.5 billion.

WaterWorld

Nov 19th, 2020

[Ready or Not, 5G is Coming: Governments Need To Be Prepared Today.](#)

5G will revolutionize government operations. State and local governments must start preparing for it now to ensure they can maximize its benefits.

The implementation of 5G wireless and broadband protocol technology around the world is well underway. Before the coronavirus pandemic, approximately 45% of the world's population was slated to have access to 5G-enabled technology by 2024. While the pandemic has decelerated the rate of 5G growth, leading developers of 5G technological equipment, backed by the federal government, are ramping up spending and deployment to meet a sharply increased demand for faster and better internet speed connections.

5G is enterprise-focused, technologically unmatched and geared toward empowering businesses, consumers and governments in ways unimaginable. It will bring enormous benefits to local governments to expand and leverage digital connectivity. For example, 5G will deliver wireless broadband speeds of up to 100 times faster than 4G LTE, meaning that governments adequately prepared for it can expect 5G to make their digital operations run much more smoothly and efficiently.

Similarly, energy providers will be able to analyze consumer energy use to make it more efficient, internet of things devices can identify issues with home appliances, vehicles, traffic flow, weather, flight patterns and so on. By some estimates, 5G could spur \$13.2 trillion in economic activity by 2035. For local governments, that could lead to major increases in revenue, both from the application and renewal fees for 5G infrastructure devices (30,000 5G units for a 100,000 population city could mean up to more than \$8 million in new, annual renewed right-of-way fees alone) and from the tax revenue generated by new industries and businesses.

But it won't be easy for governments to get the most out of 5G without proper understanding and compliance with federal law. If they don't start preparing now to adopt, place, deploy and monitor compliance with federal laws they will find themselves quickly and easily overwhelmed by the significant policy and operational challenges required to build for the 5G future.

The stakes of successfully making the switch to 5G are monumental. State and local governments can't afford to be passive. The problem, however, is that reaping the benefits of 5G will require local governments to tackle several difficult policy and operational challenges.

First, 5G will substantially increase the administrative and management workload for local governments. Most of America's 5G hardware has yet to be built and deployed (despite the commercial ads). With the coronavirus pandemic already elevating the workload and stretching the public sector labor force and localities' tax bases to the breaking point, cities and counties could easily be overwhelmed by the influx of administrative work generated by 5G implementation and possibly miss out on the revenues.

Governments can start preparing for the massive workload and administrative demands from 5G by streamlining their operations, automating their internal processes and upgrading their technology infrastructure to manage renewal fee revenues for system upgrades for regulatory compliance. With the right internal systems in place, governments will find they have the flexibility and efficiency to handle whatever 5G will throw at them. Public-private partnerships could certainly help with this, and governments may want to consider bringing in private sector vendors to help them.

Another challenge related to 5G is the enormous amounts of data that will be created. Governments will have to make hard decisions about how much data they will collect and how they will maintain and protect it. Retaining large amounts of data will dramatically increase the potential harms associated with a data breach. It doesn't matter whether that data is stored on a device or in the cloud, larger data stores present a more attractive target for data thieves. But thieves cannot steal data that has either been deleted after serving its purpose, properly secured or not even collected in the first place. That's why governments need to plan how they will prioritize, organize and potentially minimize the data they collect from their 5G-enabled jurisdictions and cities.

5G has the potential to usher in a new era of tech-savvy, data-driven governance. Governments should take the initiative to capitalize on these innovations and lean into the challenges so that they are best positioned to benefit from the impending 5G transformation. 5G is coming, and in many instances, already here. It's up to state and local governments to be ready for it.

Route Fifty

By Jonathan Gerth

NOVEMBER 20, 2020

Jonathan Gerth is vice president of tax and audit services at Avenu Insights & Analytics.

[IRS Attacks Impact Investing With Flawed Logic: A Critical Review of the IRS Argument](#)

On October 9th, the Internal Revenue Service released Private Letter Ruling 202041009 (the “Ruling”), which, in what many in the nonprofit community would have expected to be a relatively straight-forward exemption approval for a new 501(c)(3) nonprofit organization (the “Nonprofit”), resulted in not just a denial of the Nonprofit’s tax-exempt status, but, in some respects, a repudiation of impact investing as a whole, including program related investments (PRIs). While private letter rulings are only legally binding on the taxpayer that requested the ruling (in this case, the Nonprofit), these rulings are used by practitioners as a guide to IRS’s position on the application of the tax law. Thus, a negative IRS ruling is generally viewed as a warning to all others in similar circumstances. All is not necessarily lost for the Nonprofit in the Ruling. The Nonprofit still has a variety of options to consider taking to continue its fight, which the authors of this article hope it will vigorously do. As the goal of this article is not to review all of the legal strategies one could take in the exemption process, we note that there are various options so readers know that this story may not be over.

Ruling Overview

The Ruling was prompted by the Nonprofit seeking a Determination Letter from IRS confirming that it qualifies for exemption as an organization described in Section 501(c)(3) of the Internal Revenue Code. According to the Ruling (which is heavily redacted to preserve the confidentiality of the actual applicant), the Nonprofit was formed: Exclusively for charitable purposes, including, for such purposes, increasing the capital available to organizations that develop and/or operate (i) long term affordable housing for the economically and physically disadvantaged, (ii) community facilities such as schools and community health centers, (iii) businesses providing access to healthy foods, (iv) sustainable energy projects, (v) commercial real estate, and (vi) other projects that may increase social welfare.

The exempt purpose of the Nonprofit, more generally, is to “deploy capital into projects that promote a social good and that otherwise struggle to find financing in normal capital markets” in low income and underserved communities. Capital for the Nonprofit’s work comes from impact investors, specifically in the form of equity investments in pooled investment funds organized by the Nonprofit. The Ruling describes impact investors as “individuals and institutions who want to see that their funds accomplish positive social and environmental objectives and as a concomitant objective to earn financial returns and utilize capital to finance projects and organizations in line with the investors’ dual objectives”. While we recognize there are many different views on how to define an impact investor, this is the version used in the Ruling. Unlike many determination requests from applicants in the exemption process, the Nonprofit had already begun conducting activities prior to making its request for an IRS determination. Thus, the Ruling provides actual examples of activities undertaken by the Nonprofit, namely two funds that were already organized. The first was

a loan fund focusing on preventative healthcare and social service investments in an effort to reduce costly acute care interventions. The initial projects included the provision of housing and social services for the chronically homeless and for individuals exiting incarceration to reduce recidivism and the prison population. The second loan fund targeted small-scale energy efficiency and clean energy project finance. In this case, initial projects included efficiency upgrades in non-profit affordable housing units and at a non-profit senior living facility. Both projects focused on lowering operating and utility costs. The Ruling describes the funds' projects as "not commercially financeable". In fact, in characterizing all of the investments made to date by the Nonprofit, the Ruling states:

These kinds of activities are not well supported by traditional capital markets. The activities are too niche, too small scale, or too low-return to draw the attention and resources of banks, venture capital and private equity funds, and public stock and bond markets.

The Ruling also describes, in brief detail, the manner in which the Nonprofit selects projects for investment, which includes both somewhat traditional investment due diligence considering both risk and return, as well as social and environmental impact screens. In order for the Nonprofit to become sustainable it charges a "substantially below market" management fee for its services to the investment funds it manages. To the extent the Nonprofit earns any funds in excess of its costs, which it endeavors to keep low by sharing space and services with its parent organization 501(c)(3) nonprofit organization, such excess is either invested into one or more of the funds or contributed to its parent. Some other facts describing the Nonprofit's activities include that: (a) it will likely be required to register with the Securities and Exchange Commission (SEC) as an investment advisor at some point, (b) no guarantees are made to investors that they will receive a "fair market return", (c) "as of a couple of years ago" the Nonprofit was already managing assets, (d) no charitable deductions are offered to investors in the Nonprofit's funds, despite the Nonprofit's management activities being conducted in furtherance of its charitable mission, and (e) the Nonprofit's model is projected to be successful, with substantial excess revenue over expenses by its third year of operations. Questionable Application of Legal Precedent In reviewing the law governing qualification for exemption in the Ruling, IRS relies on a variety of Treasury Regulations articulating both the "organizational test" and the "operational test".

The former requires that an organization be organized in a manner that qualifies for exemption; in other words, the governing documents must meet the literal requirements for exemption. The latter test, being the more complex of the two, requires that the organization engage primarily in activities that accomplish one or more of the organization's exempt purposes. The Ruling then proceeds to recite a series of Revenue Rulings from the late 1960s through the mid-1970s, as well as a number of court cases dating back to 1945. After analyzing the precedent, IRS ultimately determined that the Nonprofit fails to qualify for tax-exempt status because it fails to satisfy the operational test for exemption, more specifically, that a substantial portion of the Nonprofit's activities consists of managing funds for a fee that provide a market or near-market return for investors. In other words, more than an insubstantial amount of the Nonprofit's activities further non-exempt purposes. As IRS characterizes the Nonprofit's activities, the funds are open to any interested investors who expect market or near-market returns while also capitalizing on activities with a public purpose. Ultimately, IRS believes the Nonprofit's "charitable objectives or results are incidental to [its] business purposes of maximizing returns for [its] investors." While some of the authority underlying the IRS conclusion is on point, a number of the citations referenced may best be described as misguided or, at worst, far from applicable to the Nonprofit's activities. For example, IRS compares the Nonprofit to an organization denied exemption in Revenue Ruling 69-528, where the organization provided investment services for a fee to other nonprofits in a manner similar to what is considered an unrelated trade or business when operated by a nonprofit organization. In contrast, the Nonprofit

charged below-market fees for investments not made in common stocks, but in specifically curated projects that not only advance the Nonprofit's exempt purposes but that would not otherwise be funded without the Nonprofit's actions. IRS seemingly ignores the fact that the Nonprofit's purposes were advanced by its investment in those projects, which were charitable. IRS similarly cites Revenue Ruling 72-369 for the proposition that offering services at cost is not enough to qualify an activity as charitable.

However, the Nonprofit is not providing general managerial and consulting services at cost like the organization in Revenue Ruling 72-369, but is rather providing below-market rates for its investment services as part of a package meant to increase the desirability of investment in exempt purpose projects that would not be funded otherwise. Again, these are projects that were otherwise not commercially financeable. In Revenue Ruling 74-587, a nonprofit invests in economically depressed areas with loans tailored to business needs based on a primary goal of advancing charitable goals, as opposed to amassing profit. While some individuals and businesses receiving financial assistance from the organization may not qualify for charitable assistance, they are "merely instruments" in effectuating the organization's exempt purposes. IRS contrasts this organization with the Nonprofit, stating that because the Nonprofit screens potential investments for both financial feasibility/risk and social/environmental impact, as well as charging fees and benefitting investors, the Nonprofit is primarily concerned with the rate of return. On the other hand, the Nonprofit will only invest if the exempt purposes screen is met, so the assertion that the Nonprofit's investments are "first and foremost concerned with the risk and return potential" seems an unfair characterization based simply on the order of operations of the Nonprofit's vetting methodology; IRS said form counts more than substance. Additionally, the activities of the organization in Revenue Ruling 74-587 are not without private benefit (to the individuals/businesses). There is no indication the loans are interest-free and there clearly is no requirement that the recipients qualify for charitable assistance.

The cases cited by IRS in the Ruling highlight the impact of the commerciality doctrine on the exemption analysis, which is somewhat murky in practice but basically equates to the fact that substantial commercial activity, as defined based on all relevant facts and circumstances, must be in furtherance of a nonprofit's exempt purposes in order to be acceptable. Various court cases over time have enumerated different facts and circumstances to be weighed, but a few commonly cited examples include whether the activity competes with for-profit enterprises, as well as how the activity is priced, advertised and funded. IRS believes the Nonprofit's activities are like those typically operated by commercial ventures, with funding solely from management fees and resulting in a high financial reserve advising against a finding of exemption. However, a comparison to *B.S.W. Group, Inc. v Commissioner*, 70 T.C. 352 (1978), for example, is not directly on point as the Nonprofit is not offering consulting services for high fees, but instead charges below-market rates and eschews a carried interest typical of fund managers, all designed to not generate a profit for the Nonprofit. It is operating to provide investments that otherwise are not offered in the market because they could not attract capital, even if there is the potential for market or near market returns. The lack of competition is, in a way, the reason the Nonprofit created the funds in the first place and is the basis of its exempt purpose. Other cases are cited by IRS, including *Airlie Foundation v. Commissioner* (283 F. Supp 2d 58 (D.D.C., 2003) and *Living Faith, Inc. v. Commissioner*, 950 F.2d 365 (7th Cir. 1991), in order to continue the competition argument, as well as to point to revenue from investment fees (as opposed to donations) and a projected high financial reserve as counseling against exemption. However, the Nonprofit invests any reserve back into its exempt projects or donates the funds to its parent 501(c)(3) organization. Additionally, based on the facts provided in the Ruling, it is a bit of a stretch to compare the Nonprofit's "promotional efforts," described as a publicly available brochure and offering documents accompanying the private funds that would be required by securities laws, with the wide-spread advertising and "commercial catch phrases" used to promote the restaurants and health food stores run by Living Faith, Inc.

Ultimately, the facts and circumstances of the Nonprofit's activities do not fit neatly with the precedents cited by IRS, which means there seems to be a significant basis for challenging the legal foundation for the position taken by IRS to deny the Nonprofit's exemption.

Tensions with Established Impact Investing Practices

In addition to applying flawed logic to the facts as presented, the Ruling seems to indicate a discomfort with the very types of activities that drive impact investing, including program-related investments (PRIs) made by private foundations. The Ruling provides a definition of impact investing that highlights dual objectives of positive social and/or environmental good and financial returns, such that the investment is not exclusively about generating profit. Nonprofits have long engaged in impact investing, sometimes termed "mission related investments (MRIs)" and IRS has declined to penalize nonprofit organizations for investments made with a charitable mission in mind that may offer lower returns than standard investment alternatives. The tax law explicitly blesses PRIs, on the other hand, with private foundations authorized to treat amounts expended in connection with PRIs as part of their required 5% minimum distribution requirements and without being considered imprudent from an investment perspective. The Treasury Regulations define PRIs as investments characterized by a primary purpose to advance exempt purposes, without a significant purpose of production of income or appreciation of property. The actual production of significant income or appreciation, however, is not, in and of itself, considered evidence of a significant purpose involving the production of income. In fact, an investment is considered to be made primarily to accomplish exempt purposes if it significantly furthers the accomplishment of the nonprofit organization's exempt activities and if the investment would not have been made but for such relationship between the investment and the accomplishment of the exempt activities. A relevant consideration is whether investors solely focused on profit would make the investment on the same terms.

The Ruling stands in stark tension with PRIs and the larger impact investing environment, as the PRI criteria seem to directly echo the facts in the Ruling. The Nonprofit created "not commercially financeable" funds in furtherance of its exempt purposes, as typical capital markets were not an option due to the "niche," "small-scale," and "low-return" nature of the investments. In short, the investments further the Nonprofit's purposes and would not have been made but for the Nonprofit's efforts. While the Nonprofit was able to provide market or near-market returns to its investors, in the PRI context, the mere creation of profit is not enough to villainize the investment itself. IRS makes much of the Nonprofit's cost-saving efforts, which again, are not enough to make profit the primary motive. Similarly, evaluating potential investments for both risk and social impact does not automatically mean a PRI is not in furtherance of exempt purposes, nor should the assumption be made about the Nonprofit's activities simply because the possibility of a return is considered. While the investors in the Nonprofit's funds may have entertained any number of reasons for investing in the Nonprofit's projects, the Nonprofit offers no promises or expectations to investors about market returns and focuses instead on furthering its exempt purposes in innovative ways. Additionally, there is no requirement that a PRI, or for that matter, charitable activities, only benefit a recipient that would otherwise qualify for charitable assistance, though IRS cites this as a reason against exemption. Lastly, as noted, PRIs are not considered to have a primary profit motive simply because they happen to be a good investment with market or near-market returns. Characterizing the Nonprofit's activities as "trying to secure the highest returns possible for your clients" misses the greater context in which the Nonprofit is operating, namely in a space where projects in furtherance of exempt social and environmental purposes would not otherwise get done. IRS is also uneasy about the fact that investors, including the general public as opposed to simply exempt organizations, can (and are) benefitting from the Nonprofit's investments. However, in the PRI context, the private enterprises that receive support are most certainly benefitted, but so are exempt purposes furthered. On the other hand, PRI returns are required to be recycled by the investing private

foundation for charitable purposes. Perhaps the decision in the Ruling would have come out differently had the Nonprofit's management activities been funded through donations as opposed to below-market fees, but the arguments made by IRS strain against the backdrop of established PRI regulations.

The Ruling may result in the curbing of creative fundraising of third-party dollars by nonprofit organizations striving to provide much-needed capital for exempt-purpose facilities and services when facing a dearth of traditional funding options. One of many dangers with this approach is a reduced ability for nonprofits to court or work with outside funding that is not a charitable donation, grant or loan, which, in turn, will reduce the probability that many difficult-to-fund projects with immense social good will ever be started. While IRS may have legitimate arguments in favor of such restrictions, the reasoning provided in the Ruling is not altogether convincing.

Thursday, October 22, 2020

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Treasury Releases Priority Guidance Plan.

On November 17, 2020, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) announced the release of the 2020-2021 Priority Guidance Plan. The 2020-2021 Priority Guidance Plan sets forth guidance priorities for the Treasury and the IRS. Each year, the Treasury Department's Office of Tax Policy and the IRS use the Guidance Priority List to identify and prioritize that tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The Guidance Priority List focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law.

You can find the 2020-2021 priority guidance plan [here](#).

TAX - OHIO

Athens v. McClain

Supreme Court of Ohio - November 5, 2020 - N.E.3d - 2020 WL 6494232 - 2020 -Ohio- 5146

Municipalities brought action against Tax Commissioner challenging constitutionality of statutes governing state collection and administration of municipal net profit taxes.

The Court of Common Pleas entered judgment for Tax Commissioner. Municipalities appealed. The Court of Appeals affirmed. Municipalities appealed.

The Supreme Court held that:

- General Assembly's authority to limit municipal power to levy taxes includes administrative acts that the enactment requires;
- General Assembly acted within its authority when it enacted centralized administration system for municipal net profit taxes;

- Statute providing for state’s retention of a one-half percent of municipal net profits taxes as part of centralized administration exceeded General Assembly’s authority; and
- The unconstitutional retention provision could be severed.

General Assembly acted within its authority when it enacted centralized administration system for municipal net profit taxes; laws did not take over a municipality’s own internal operations but instead made administration of municipal net profit tax, for those taxpayers that elected centralized administration, an operation of the state tax department, with the state thereby becoming a fiduciary for the municipalities whose taxes it collected.

Statute directing State Treasurer to retain one-half percent of municipal net profit taxes for collection and administration services, as part of centralized administration, rather crediting amount to fund that distributed funds to municipalities, exceeded General Assembly’s general power to legislate, since municipalities exercising home-rule authority were not persons “subject to” the state’s regulation.

[Prepared Leaders Make Effective Policy: GFOA's Elected Officials Guide Series Introduction](#)

December 1, 2020 | 1 p.m.-2:15 p.m. ET

Details:

Prepared Leaders Make Effective Policy: GFOA’s Elected Officials Guide Series Introduction
Thriving communities can often trace their good fortune to excellent management of public finance. Leaders who understand the fundamentals of public finance are better prepared to make informed policy, enabling communities and their local government to reach their full potential. Bridging the communication gap between elected officials and the public finance officers that advise them allows for efficient processes and clear expectations. GFOA’s Elected Officials Guide series will help familiarize readers with essential concepts of public finance by detailing real examples and highlighting the topics most valuable when understood. This seminar introduces the series and offers an in-depth overview of Understanding the Fiscal Health of Your Community, while previewing subsequent books in the Elected Officials Guide series.

Learning Objectives:

Introduce GFOA’s Elected Officials Guide Series

Cover topics and concepts from Understanding the Fiscal Health of Your Community including:

- o Financial Statements
- o Fund Balances
- o Revenue Forecasting
- o Regulatory Agencies
- o Budgeting Basics

Attendees should leave with a basic foundation for literacy of public finance concepts and terms. This would include: understanding the differences in balances (governmental, proprietary, fiduciary), knowledge of significant regulatory bodies, grasping fundamentals of multiple budgeting methods.

Member Price: Free

Non-member Price: Free

[Register.](#)

[NFMA Introduction to Municipal Bond Webinar Series.](#)

Each year since 1987, the NFMA has held the Introduction to Municipal Bond Credit Analysis. Though the pandemic prevents us from holding this event in person this year, we have invited speakers to discuss ten topics over a series of ten one-hour sessions. This course is designed for new analysts, support and sales personnel, and has also been found worthwhile for seasoned analysts seeking to brush up on other sectors.

All sessions will begin at Noon Eastern, and last approximately one hour. Registrants may attend the live session and/or watch the replay until February 1, 2021.

To view the list of sessions (all included with registration), [click here](#).

To register one individual, [click here](#).

To register up to five individuals from the same firm, [click here](#).

[Still See Continual Inflows Into Muni Market: Kazatsky \(Radio\)](#)

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, on the health of the muni market. Hosted by Paul Sweeney and Vonnie Quinn.

[Listen to audio.](#)

Bloomberg Radio

November 20, 2020 — 10:26 AM PST

[HY Munis Worth A Look Vs. HY Corporate Credit Right Now.](#)

Summary

- “High-yield” tends to be associated with corporate credit in investor income portfolios. However, the high-yield/unrated municipal sector is also worth a look.
- We discuss some benefits of HY muni bond CEFs over their corporate analogues such as relative valuation, higher-quality fund portfolios, resilient leverage structures and more.
- We also highlight a number of funds that allocate to the space such as OIA, NMZ and NMCO.

[Continue reading.](#)

Seeking Alpha

Nov. 21, 2020

[Supreme Court Ends Puerto Rico Bondholders' Bid for Pension Assets.](#)

The U.S. Supreme Court on Monday declined to review an appeals court ruling against a group of Puerto Rico bondholders seeking pension assets and a share of future revenue.

On Jan. 30, the 1st U.S. Circuit Court of Appeals in Boston upheld a June decision from the federal judge overseeing Puerto Rico's complex bankruptcy case that went in favor of the Employees Retirement System of the Government of Puerto Rico and the federal oversight board. The ruling dismissed arguments by ERS bondholders holding \$3 billion of ERS debt that they were entitled to some assets that existed when they bought the bonds as well as future pension contributions, which are now coming from general revenues.

The Financial Oversight and Management Board for Puerto Rico said at the time of the 1st Circuit ruling that it "clearly denies ERS creditors access to public pension contributions."

Seeking to have that decision overturned, the ERS creditors, including Andalusian Global Designated Activity Co., Glendon Opportunities Fund LP, Mason Capital Master Fund LP and several Oaktree Capital funds, argued in their petition that the 1st Circuit decision conflicted with other circuits, "thereby endangering secured lending and municipal finance."

PENSIONS & INVESTMENTS

by HAZEL BRADFORD

November 16, 2020 03:37 PM

[Financial Accounting Foundation Names Five New Members to the Board of Trustees.](#)

Norwalk, CT—November 17, 2020 — The Financial Accounting Foundation (FAF) Board of Trustees today announced the appointment of new Trustees Timothy L. Christen, Lynnette Kelly, Richard N. Reisig, Sarah E. Smith, and Robin L. Washington. All appointees' terms will begin January 1, 2021 and conclude on December 31, 2025.

The FAF is the parent organization of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

"Together with the Board of Trustees, I am pleased to welcome Tim, Lynnette, Rick, Sarah, and Robin," said FAF Chair Kathleen L. Casey. "Their varied backgrounds, experience, and skill sets will ensure a continued diversity of perspective, which is critical for the FAF in directing the appropriate stewardship of the FASB and GASB in carrying out their standard-setting missions."

The new appointees will fill vacancies left by retiring members Charles M. Allen, Christine M. Cumming, Eugene Flood Jr., Kenneth B. Robinson, and Diane M. Rubin whose terms conclude on December 31, 2020.

“On behalf of the FAF, I want to acknowledge the contributions of Chuck, Christine, Gene, Ken, and Diane and thank them for their dedication and service. I would like to also extend an additional note of appreciation to Christine for her service as secretary and treasurer and to Diane for her role as vice chair,” noted Ms. Casey.

Below are brief biographical sketches of the appointees:

Timothy L. Christen is the Chairman of the Board of Baker Tilly International Ltd. He has over 30 years of experience in the public accounting profession including serving as Chairman of the AICPA. Tim most recently served as Chairman and CEO of Baker Tilly US LLP, a role that he held between 1998 and 2016. He is currently serving as a member of several additional boards, including CPA.com, a subsidiary of the AICPA, where he serves as Chairman of the Compensation and Audit Committees, privately held Sub-Zero Group, and NYSE listed Mayville Engineering Company where he serves as Chairman of the Audit Committee and member of the Nominations and Governance Committee. He has also been recognized as one of the “100 Most Influential People in Accounting Profession” by Accounting Today and was included on the list of “Most Admired US Managing Partners” by Inside Public Accounting.

Lynnette Kelly is the former President and Chief Executive Officer of the Municipal Securities Rulemaking Board (MSRB). She has over 30 years of business, legal, regulatory, compliance, and technology experience in the fixed income markets. During her tenure at MSRB, she increased the level of transparency in the municipal securities market with her oversight of the launch of the MSRB’s Electronic Municipal Market Access (EMMA) website, which is the official source of municipal market data and documents. Ms. Kelly is NACD Directorship Certified and sits on the board for the University of Chicago Harris School of Public Policy Center for Municipal Finance and for Caretech Inc. Ms. Kelly is also involved with various charitable organizations that provide educational opportunities to disadvantaged students including the Bishop John T. Walker School for Boys, the CUES schools in Omaha, Nebraska, the Washington, D.C. Professional Enrichment Academy, and the Economic Club of Washington, D.C.

Richard N. Reisig is the Chief Executive Officer for Anderson ZurMuehlen & Company, P.C. He has over 38 years of experience as an auditor and consultant on accounting, tax, and financial reporting issues working for private companies, not-for-profits, and local governmental entities. He has had extensive involvement in standard-setting, including as a member of the FASB’s Private Company Council and in various leadership roles with the AICPA and National Association of State Boards of Accountancy (NASBA). He has served on the Montana Board of Public Accountants including two appointments as Chair. Mr. Reisig received the George D. Anderson Distinguished Service Award from the Montana Society of CPAs and was elected to leadership roles on various civic and community boards, including Special Olympics of Montana and for multiple entities for Montana State University. He currently serves as the at-large Director for the NASBA.

Sarah E. Smith is the former Chief Compliance Officer and Chief Accounting Officer for Goldman Sachs Group, Inc., where she currently serves as a Senior Advisor. She has over 40 years of experience in the accounting and auditing profession, including nearly 25 years with Goldman Sachs Group, where she was a long-term member of the Management Committee. She also served on several Goldman Sachs committees including the Reputational Risk Committee, Client and Business Standards Committee, Investment Policy Committee, Risk Committee, and the Steering Committee on Regulatory Reform. Ms. Smith is a member of the Institute of Chartered Accountants in England and Wales and attended City of London University.

Robin L. Washington is the former Executive Vice President and Chief Financial Officer for Gilead Sciences, Inc. She has over 30 years of experience as a preparer of financial statements, with wide-

ranging experience across the healthcare and technology sectors. Ms. Washington currently serves on multiple corporate boards, including Alphabet Inc., the parent company of Google, Inc., Honeywell International Inc., and Salesforce.com. Ms. Washington also serves on multiple non-profit boards including the University of California, San Francisco Benioff Children's Hospital of Oakland, the University of Michigan Presidents Council, and Ross Business School Advisory Board, as well as the Graziadio School of Business and Management at Pepperdine University.

A complete list of the Board of Trustee members can be found at www.accountingfoundation.org/trustees.

[The MTA Is Developing Plans to Cut Costs and Borrow From Fed. Its Bonds Have Rallied.](#)

The Metropolitan Transportation Authority next month will be discussing cutting service by up to 40%, laying off thousands of workers and increasing fares, as it weighs options to offset sliding revenues from the pandemic.

Officials reiterated the need for federal funding at a Wednesday meeting, and said deep cuts to service and jobs will be necessary if Congress doesn't offer aid.

Yet the market seems to be taking a slightly less downbeat perspective than it was before. Yields on some MTA bonds have declined since the U.S. presidential election and news of a vaccine: A two-year bond yield, for example, was trading at 3.5% Tuesday, down from 4.6% on Nov. 6, according to Bloomberg data. Prices and yields move oppositely.

MTA officials have requested \$12 billion in grants from Washington, and forecast deficits of more than \$15 billion in the next three years without any steps to reduce that gap. The deficits will total about \$7 billion if the MTA takes deficit-reduction steps that aren't service or jobs cuts.

The four-year "worst case" budget plan introduced Wednesday reflects no deficit spending, though the state has recently passed a law that allows the MTA to borrow up to \$10 billion to cover pandemic-related costs in coming years.

To be sure, MTA bond yields are still well above their levels from the start of this year, when the two-year bond traded around 1.4%. The coronavirus pandemic prompted the yield to soar as high as 7.9% in March. Last week, subway ridership was down as much as 70% compared to similar days last year.

So the moderate decline in bond yields is likely the result of investor optimism about federal aid. Help from Congress likely won't arrive until at least next year, however, and the possibility of Republican control of the Senate may hamper the amount of aid received.

So to help fill this year's budget gap, MTA officials are working on an application to tap the Federal Reserve's Municipal Liquidity Facility for the maximum \$2.9 billion available. The process is under way, said Robert Foran, the MTA's chief financial officer, in Wednesday's board meeting. That should allow the MTA to access the facility by the end of this year.

The MTA's board will take action on its 2021 budget proposal at next month's meeting.

Barron's

By Alexandra Scaggs

Nov. 18, 2020 1:37 pm ET

[NASBO State Expenditure Report.](#)

This annual report examines spending in the functional areas of state budgets: elementary and secondary education, higher education, public assistance, Medicaid, corrections, transportation, and all other. It also includes data on capital spending by program area, as well as information on general fund and transportation fund revenue collections.

Overview: Fiscal 2018-2020

- Total state spending (including general funds, other state funds, bonds, and federal funds) grew 7.8 percent in estimated fiscal 2020.
- Federal funds are estimated to have increased 14.1 percent in fiscal 2020, the highest annual growth rate since the Great Recession. The sizeable increase in federal funds spending is largely due to additional federal aid states received in response to the COVID-19 pandemic, including the CARES ACT and increased FMAP.
- Spending from states' own funds (general funds and other state funds combined, excluding bonds) rose 5.1 percent in estimated fiscal 2020.
- The "all other" category saw the largest gain in total state spending in fiscal 2020, at 12.6 percent. Many of the top expenditure areas for CARES Act funds fall under the "all other" category including unemployment insurance, public health programs, housing assistance, emergency management, economic relief, aid to local governments, and broadband and other technology upgrades.
- State general fund revenue declined 0.8 percent in fiscal 2020, the first decline since the Great Recession. The revenue data in this report are based on estimates provided over the summer and are subject to change; NASBO's Fall Fiscal Survey of States, to be released in December, will provide preliminary actual data on general fund revenues for fiscal 2020.

[Download Summary.](#)

[Download Full Report.](#)

National Organization of State Budget Officers

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[Michigan Court of Claims Denies Request for Injunction Against State Over Local Licensing Decisions: Dykema Gossett](#)

On November 11, 2020, Attitude Wellness D/B/A Lume Cannabis Company (Lume), filed suit in the Michigan Court of Claims against the Michigan Marijuana Regulatory Agency (MRA), the Village of

Edwardsburg, and two private parties, after the Village denied Lume's application for village marijuana establishment licenses. Lume sought an injunction to prevent the MRA from issuing state licenses to the two businesses that won licenses from the Village. Last week, the Court of Claims denied that request, finding Lume's claims against MRA to be "speculative and inexact."

Under the state's adult-use law, the Michigan Regulation and Taxation of Marihuana Act (MRTMA), if the MRA is faced with more applications from a municipality than the number of establishments that the municipality allows, then the municipality is to select from among competing applications by a competitive process. That process must be intended to select the applicants who are best suited to operate in compliance with MRTMA. As permitted under MRTMA, the Village limited the number of licenses for retail establishments, in this case to two, and chose from among the applicants.

In the Michigan Court of Claims, Lume alleged that the Village inappropriately selected Alvarez Cultivation (Alvarez) and NOBO Michigan (NOBO), in violation of MRTMA. Michigan's Court of Claims is a court of limited jurisdiction, which can only entertain claims against the State and its agencies. Lume argued that the MRA was the proper defendant and that MRA should be enjoined from awarding state licenses to Alvarez and NOBO because the Village failed to follow MRTMA's requirements with respect to competitive selections.

Lume's case illustrates the difficulty of succeeding in such challenges. Although MRTMA requires a municipality to select applicants by virtue of a competitive process aimed at ascertaining which are best suited to comply with the law, by its plain language MRTMA's requirement applies only in cases where MRA receives too many applications. But an MRA application is not complete without a municipal attestation that the applicant is in compliance with local ordinances. And municipalities generally will not provide such an attestation until applicants have been selected at the local level. As such, MRA does not face more applications than a municipality allows, because the municipality has already whittled the number down before the applicants come to MRA.

While the practicalities of the MRA licensing process and specific language of MRTMA has led to substantial debate as to whether and how a competitive process is truly required, Court of Claims Judge Michael J. Kelly issued an opinion in Lume's case last week that did not address this issue. Rather, Judge Kelly simply assumed that the MRTMA requirement was implicated here.

Nevertheless, Judge Kelly denied Lume's motion for an injunction. In doing so, he found that "the crux of plaintiff's allegations is against Edwardsburg and its decision to approve applications by Alvarez and NOBO." The Court further found that the few allegations levied against the MRA were "speculative and inexact" because they assumed that "Alvarez and/or NOBO will receive licensure—first local licensure and then state licensure." And Alvarez and NOBO apparently had not yet even applied for licensure from MRA.

Even though the MRA was the only state-actor named in the complaint, none of the defendants were dismissed. While the Court of Claims has no jurisdiction over non-state actors, Judge Kelly stated in a footnote that "the Court has jurisdiction over the only defendant against whom it has been asked to grant relief—the MRA—at least for purposes of the instant motions." Given that, "while the court questions whether it has jurisdiction over the non-state actors, it will not sua sponte dismiss them at this time, as doing so is unnecessary for resolving the currently pending motions." But this is a fundamental problem for aggrieved applicants who wish to sue the MRA and municipalities over a licensing fight—the Court of Claims lacks jurisdiction over non-state actors, yet the Circuit Court that has jurisdiction over the municipalities lacks jurisdiction over the MRA.

As this case moves forward, there may be further insight to gain.

Dykema Gossett PLLC - R. Lance Boldrey and Soujoud C. Hamade

November 23 2020

[Austin Voters Approve Tax Measure to Help Fund \\$7.1B Project Connect Plan: Nossaman](#)

On November 3rd, Austin voters approved a property tax increase to help fund the \$7.1 billion Project Connect mass transit project. The initial investment, which is a portion of the "Project Connect System Plan," includes 27 miles of rail service, 31 stations and a transit tunnel. Specific elements of the plan include:

Blue Line: An approximately 15-mile light rail line running from Austin-Bergstrom International Airport (AUS), connecting through the downtown station and running north to Lamar Boulevard at Highway 183

Orange Line: A 21-mile light rail line running from North ...

[Continue reading.](#)

Nossaman LLP

By Patricia de la Peña on 11.19.2020

[BDA Policy Brief: Post Election Update on GSE Reform](#)

[Fixed Income - Insights: BDA Policy Brief - Post Election Update on GSE Reform](#)

BOND DEALERS OF AMERICA

NOVEMBER 19, 2020

[BDA Washington Weekly: Lame Duck Session Begins](#)

[Read the BDA Washington Weekly.](#)

Bond Dealers of America

November 20, 2020

[Event Recap: BDA 12th Annual National Fixed Income Conference](#)

Thank you to all attendees, sponsors, and exhibitors for helping make our 12th annual National Fixed Income Conference our strongest yet!

Please reach out with any questions or comments. We need your feedback to ensure we continue building a conference with the right topics and speakers – all focused on the U.S. fixed income markets. View the full agenda below and links to webinars.

Over the span of two weeks November 5 – 13, 2020, the BDA held its 12th Annual National Fixed Income Conference virtually with ten sessions of fireside chats and panel sessions.

Key highlights from the event include:

- Over 330 registered attendees – fixed income leaders, representing all aspects of the markets, regulators
- Over 75 firms represented from coast-to-coast
- Dozens of sponsors whose support helped to make this event possible
- Virtual exhibitor booth to represent firms sponsoring the event

November 5

[Political Overview – What the National Elections Mean for the US Capital Markets](#) with Nathan Gonzales, Editor, and Publisher of Inside Elections with Nathan L. Gonzales & CNN Political Analyst

November 6

[A New Day for Muni Market Regulation](#) with Mark Kim, CEO, MSRB

November 9

[Life in the new normal: managing in the age of COVID and near-zero yields](#)

Panelists:

- Greg Bienstock, CEO & Co-Founder, Lumesis
- John Miller, Chief Administrative Officer & Head of Municipal Underwriting and Distribution, Piper Sandler
- SJ Guzzo, Managing Director, Debt Capital Markets, Duncan Williams
- John Reilly, Managing Director, Head of Taxable Fixed Income Trading, Wells Fargo Advisors
- Triet Nguyen, Vice President, Strategic Data Operations, DPC Data

[The Search for Relative Value Across Fixed Income Markets](#) with Spencer Lee of Agilon

November 10

[Municipal Bond Issuance Expectations and Trends and Climate Change and the Municipal Bond Market](#)

Panelists:

- Matt Boles, Managing Director, Municipal Finance, Head Middle Markets Group, RBC Capital Markets
- Tim Coffin, Senior Vice President, Breckinridge Capital Advisors
- Lynn Martin, President, Fixed Income and Data Services, ICE
- Tom Doe, President, Municipal Market Analytics, Inc.
- Hector Negroni, CEO & CIO, FCO Advisors LP
- Bernard Bailey, Managing Director, Assured Guaranty

[Market Observations, Issuance Expectations and Their Focus on Counterparties, Whether Wall Street or Regional Dealer](#) with Randy Snook, CEO of the FHLB Office of Finance

November 12

[Corporate and Government Bond Market Structure – Economic Turbulence, Stimulus, and the Fed Programs](#)

Panelists:

- Susan Estes, Founder, President & CEO, OpenDoor Trading
- Mark Watters, Co-Founder, and CCO, AxeTrading
- Chris Bruner, Managing Director and Head of U.S. Credit Product, Tradeweb
- Jason Quinn, Chief Product Officer, Trumid

[Municipal Bond Market Structure – Fed Intervention, Technology, and Liquidity.](#)

Panelists:

- Stephen Laipply, Managing Director, Head of U.S. iShares Fixed Income ETF's, BlackRock
- Tim Stevens, COO and Co-Founder, Lumesis
- Dan Bingham, Head of Institutional Markets, BAM
- Hardy Manges, Head of Municipal Dealer Sales, MarketAxess
- Chris Lee, Managing Director, Wells Fargo Securities

November 13

[Fixed Income Regulation and Market Structure Given Economic Shutdown, Stimulus, and Fed Programs](#) with Robert Cook, President and CEO, FINRA

November 17, 2020

[**Get Your Copy of the New Federal Taxation of Municipal Bonds Deskbook Today!**](#)

The latest edition of the [*Federal Taxation of Municipal Deskbook*](#), prepared by NABL's Section 103 Editorial Board, is now available! The new edition gathers a selection of the most used IRC sections and applicable regulations dealing with municipal finance as well as the as the most relevant statutory and legislative history cites for each section, SLGS regulations and important revenue procedures.

It also includes:

- Proposed Treasury Regulation § 1.1001-6 regarding transition from interbank offered rates.
- Treasury Decisions 9854 which makes changes to Treasury Regulation § 1.148-2 and makes final Treasury Regulations § 1.148-11(n), Investment-type property.
- Rev. Proc. 2019-17 regarding qualified residential rental projects to use certain group references for tenants.
- Notice 2019-39 regarding current refunding for certain targeted state, local and Indian tribal government bond programs.

The deskbook is organized by code section for easy reference, and it's a great resource for bond and tax attorneys, issuers, underwriters, and financial advisors who need fast access and definitive answers.

NABL also recently released the Eighth Edition of the [Federal Securities Laws of Municipal Bonds Deskbook](#). This is an essential guide for all bond lawyers, regulatory staff, in-house counsel for investment banking firms and banks, state and local government attorneys, and other securities professionals. Prepared by members of NABL's Securities Law Editorial Board, this comprehensive publication delivers all key materials relating to the federal securities laws of municipal bonds in a portable deskbook and companion eBook with expanded content.

The new edition includes updates to the SEC and MSRB Rules and the most recent relevant MSRB notices and SEC Actions. It also contains key sections of the Securities Act of 1933, Securities Exchange Act of 1934, and the Investment Company Act of 1940, as well as select SEC cease-and-desist orders, interpretive and no-action letters, and summaries of important SEC enforcement actions and reports.

[Ethical Considerations in a Digital World: Live NABL Webinar](#)

With the COVID-19 pandemic, new ethical and client confidentiality considerations have surfaced regarding the expanded use of email, working from home and the use of home computer networks, online meetings and platforms, and the use of mobile technology and phones. On **Tuesday, December 8, 2020, 1:00 - 2:30pm EST**, NABL will host a live Zoom webinar, "[Ethical Considerations in a Digital World: Why These Matter to Your Public Finance Practice](#)," that will discuss the rapidly changing technology environment within a public finance practice.

The panelists, Jason Akers, Foley & Judell L.L.P, New Orleans, LA, and Ryan K. Callender, Squire Patton Boggs (US) LLP, Cleveland, OH, will take an in-depth look at the ethical issues surrounding bond counsel practice in municipal finance transactions and the application of the Model Rules of Professional Conduct to selected topics. The webinar will have an emphasis on cybersecurity and the risks associated with everyday technology, especially as they relate to the changing workplace settings surrounding the COVID-19 pandemic.

This is the perfect opportunity for you to secure your ethics and technology CLE credits before the end of the year. The live webinar is \$195 for members and \$295 for non-members.

CLE Information: NABL has applied for and anticipates receiving between 1.5 and 1.8 hours of ethics credit in states that accredit live webinars and in Florida and North Carolina that offer technology credit

[Click here](#) to register.

[US Fixed Income Issuance and Outstanding: SIFMA Research Quarterly](#)

A quarterly report containing brief commentary and statistics on total U.S. fixed income markets.

[Research Quarterly, Fixed Income](#)

November 6, 2020

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- [GASB Proposes New Implementation Guidance to Assist Stakeholders with Application of its Pronouncements.](#)
 - [Real-Time Financial Reporting Improves Muni Bond Markets.](#)
 - [Hawkins Advisory: Rev. Proc. 2020-44, Advance Guidance for Certain Transitions from IBORs](#)
 - [GFOA Working Group Focusing on Libor Transition.](#)
 - [What You Need to Know for the Upcoming LIBOR Transition: Best Practices and Guidance - Ballard Spahr Podcast](#)
 - [More High-Yield Muni Borrowers Are Defaulting but Investors Still Want In.](#)
 - Substantive Native American tax case [here](#) if that's your bag, baby.
 - And finally, And That Narrows Things Down How? is brought to us this week by [Troutman v. Louisville Metro Department of Corrections](#) (We definitely need to add Trout Man to the Marvel Cinematic Universe.), in which the Department of Corrections got dinged for not recognizing that an inmate was suicidal despite the fact that he, "showed signs of depression; expressed feelings of hopelessness; appeared anxious, afraid, or angry." But in all fairness, that description currently applies to - I don't know - EVERY SINGLE LAST ONE OF US!
-

VOTING - GEORGIA

[Wright v. Sumter County Board of Elections and Registration](#)

United States Court of Appeals, Eleventh Circuit - October 27, 2020 - F.3d - 2020 WL 6277718

Voter brought action challenging county's re-drawn school board district map, alleging that the electoral mechanism created by the new map would violate section 2 of the Voting Rights Act by diluting the strength of Black voters in county.

The United States District Court granted summary judgment in favor of county board of elections and registration. Voter appealed. The United States Court of Appeals reversed and remanded. Following bench trial on remand, the District Court found a section 2 violation, enjoined upcoming school board elections, and drew a new district map for county's school board. Board appealed.

The Court of Appeals held that:

- Court of Appeals would review the entire record, both what voter's expert on redistricting demographic analysis and the analysis of racial voting patterns presented at trial and the findings, report, and maps presented by special master in subsequent remedial proceedings, and
 - District court did not clearly err in finding that county's re-drawn school board district map violated section 2 of the Voting Rights Act.
-

ZONING & PLANNING - GEORGIA

[Dawson County Board of Commissioners v. Dawson Forest Holdings, LLC](#)

Court of Appeals of Georgia - October 29, 2020 - S.E.2d - 2020 WL 6336058

Landowner brought two actions against county board of commissioners and board's commissioners in both their official and individual capacities, after board denied landowner's zoning requests, asserting that the current zoning classification was unconstitutional and seeking prospective relief

to prevent its enforcement.

The Superior Court granted defendants' motion to dismiss actions against the board and its commissioners in their official capacities, but declined to dismiss the actions against the commissioners in their individual capacities. The parties cross-appealed.

The Court of Appeals held that:

- Sovereign immunity barred landowner's claims against county board of commissioners and its commissioners in their official capacities;
- Legislative immunity did not bar landowner's claims against commissioners, in their individual capacities; and
- Landowner plausibly stated claims against commissioners in their individual capacities.

Sovereign immunity barred landowner's claims for declaratory and injunctive relief against county board of commissioners and its commissioners in their official capacities; the claims sought injunctive and declaratory relief from the enforcement of an allegedly unconstitutional ordinance, i.e., zoning classification as applied to the properties, against the board and its commissioners in their official capacities, Supreme Court decision laying out sovereign immunity rule did not exempt zoning cases, and landowner identified no constitutional or statutory authority waiving sovereign immunity on the ground that an action was a zoning case.

Legislative immunity did not bar landowner's claims against commissioners on county board of commissioners, in their individual capacities, in which landowner challenged current zoning classification and sought prospective relief to prevent its enforcement; even assuming commissioners' votes against rezoning the properties were legislative acts, landowners claims did not arise from commissioners' past votes on the properties' zoning classifications, but instead, their claims for declaratory and injunctive relief arose from commissioners' anticipated future enforcement of allegedly unconstitutional zoning classifications.

Landowner plausibly stated claims against commissioners on county board of commissioners, in their individual capacities, in which landowner challenged current zoning classification and sought prospective relief to prevent its enforcement; complaints claimed that commissioners were empowered to enforce the current, allegedly unconstitutional zoning classifications on the properties, and the allegations of the complaints did not disclose with certainty that landowner would not be entitled to relief under any state of provable facts asserted in support.

LIABILITY - KENTUCKY

[Troutman v. Louisville Metro Department of Corrections](#)

United States Court of Appeals, Sixth Circuit - October 29, 2020 - F.3d - 2020 WL 6336315

Estate and daughter of pretrial detainee who committed suicide while in solitary confinement at correctional facility brought civil rights action against classification officer, facility director and municipality, alleging deliberate indifference.

The United States District Court entered summary judgment in favor of defendants. Daughter appealed.

The Court of Appeals held that:

- Fact question as to whether classification officer acted with deliberate indifference to pretrial detainee's likelihood of suicide precluded summary judgment in favor of officer;
- Daughter failed to establish claim that director of correctional facility acted with deliberate indifference; and
- Daughter failed to establish claim that municipality acted with deliberate indifference.

Genuine issue of material fact as to whether classification officer acted with deliberate indifference to pretrial detainee's likelihood of suicide precluded summary judgment in favor of officer in detainee's daughter's § 1983 action alleging violation of due process following detainee's suicide; although officer claimed reliance on a medical judgment that detainee no longer presented a suicide risk, the situation did not remain stable between detainee's initial clearance from medical and his suicide days later, as detainee was involved in altercations that merited his removal to isolation, and medical clearance to general population was not the same as clearance to solitary confinement with access to bedsheets and barred windows.

ZONING & PLANNING - MAINE

[Portland Pipe Line Corporation v. City of South Portland](#)

Supreme Judicial Court of Maine - October 29, 2020 - A.3d - 2020 WL 6325858 - 2020 ME 125

Pipeline operator and trade association brought action against city and city's code enforcement officer, challenging validity of city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor and building new structures for that purpose.

The United States District Court granted in part and denied in part defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment, and, after bench trial, dismissed plaintiffs' sole remaining claim. Plaintiffs appealed. The United States Court of Appeals certified question.

The Supreme Judicial Court held that:

- City ordinance was not in direct conflict with the Maine Department of Environmental Protection's (MDEP) exercise of the State's police power pursuant to the Coastal Conveyance Act;
- In a matter of first impression, license issued by the MDEP to pipeline operator, that authorized operator to reverse the flow of oil in one of its pipelines, was not an "order" within meaning of the Coastal Conveyance Act; and
- The Coastal Conveyance Act did not preempt city ordinance by implication.

City ordinance intended to limit air pollution by prohibiting the bulk loading of crude oil onto any marine vessel in city's harbor was not in direct conflict with the Maine Department of Environmental Protection's (MDEP) exercise of the State's police power pursuant to the Coastal Conveyance Act; the Ordinance did not purport to require the MDEP to do anything that the Act said it could not do, nor did it bar the MDEP from doing what the Act says that it could do, and it was not impossible to comply with both the ordinance and the license issued to pipeline operator by the MDEP, where the license permitted, and the ordinance did not forbid, transporting oil from city's harbor via pipeline to Canada, as operator had always done.

License issued by the Maine Department of Environmental Protection's (MDEP) to pipeline operator, that authorized operator to reverse the flow of oil in one of its pipelines, was not an "order" within

meaning of the Coastal Conveyance Act; while the words “Department Order” appeared on the first page of the renewal license, the license did not command, direct, or instruct the operator to do anything other than fill rodent burrows and remove soil from the base of storage tanks before it conducted permitted activities.

The Coastal Conveyance Act did not preempt city ordinance intended to limit air pollution by prohibiting the bulk loading of crude oil onto any marine vessel in city’s harbor by implication; the Act unambiguously declared that municipal ordinances concerning oil terminal facilities were valid unless they directly conflicted with the Act or rules or orders made pursuant to it, and the city’s home rule authority to enact the ordinance was expressly recognized and affirmed by the Act.

TELECOM - MASSACHUSETTS

[Cellco Partnership v. City of Peabody](#)

Appeals Court of Massachusetts - September 24, 2020 - N.E.3d - 98 Mass.App.Ct. 496 - 2020 WL 5667189

Personal wireless services carrier sought review of city’s denial of special permit application to construct a wireless services facility to remedy wireless coverage gap in city, alleging violation of Telecommunications Act (TCA).

The Land Court Department granted summary judgment for carrier. City appealed.

The Appeals Court held that:

- Municipal-wide distributed antenna system was not a feasible alternative to proposed facility;
- Statements in summary judgment affidavit concerning cost comparisons for alternative to facility were conclusory and unsupported; and
- No feasible alternative existed.

Municipal utility’s proposed municipal-wide distributed antenna system to remedy personal wireless services coverage gap in city was not a feasible alternative to carrier’s proposed personal wireless service facility, and thus city’s denial of carrier’s special permit application to construct facility effectively prohibited provision of personal wireless services in violation of Telecommunications Act (TCA), where carrier requested a price proposal seven times over a two-month period, utility failed to offer any price proposal, and parties could not reach an agreement as to provision of communication services to the new antennae, pole rental fees, and safety concerns.

Statements from municipal utility’s affidavit about estimated cost comparisons for a proposed alternative option to remedy carrier’s coverage gap for personal wireless services were conclusory and unsupported, and thus, insufficient to defeat motion for summary judgment in carrier’s zoning appeal alleging that city’s denial of special permit application to construct a wireless services facility violated Telecommunications Act (TCA) as an effective prohibition on service, where proposed option failed to materialize and cost estimates were developed based on wireless services from a different town.

No feasible alternative existed to carrier’s proposed personal wireless service facility, and thus city’s denial of carrier’s special permit application to construct facility effectively prohibited provision of personal wireless services in violation of Telecommunications Act (TCA), where carrier made diligent attempts, over course of four and one-half years, to find another feasible option, carrier considered multiple locations including utility pole, a church steeple, and site itself, carrier explored other

options, such as small cell antennae and a municipal-wide distributed antenna system, and carrier considered some options multiple times.

EMINENT DOMAIN - MISSISSIPPI

[Bay Point Properties, Inc. v. Mississippi Transportation Commission](#)

Supreme Court of Mississippi - October 29, 2020 - So.3d - 2020 WL 6334788

Landowner filed inverse condemnation proceedings against the Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property.

The Circuit Court entered judgment on jury verdict finding that the easement, for which MTC had paid \$50,000, continued to encumber the property, but that the use by MTC was not a highway purpose and awarding landowner the encumbered value of \$500.00 and no attorney fees. Landowner appealed. The Supreme Court affirmed in part, reversed in part, and remanded for award of attorney fees. On remand, the Circuit Court awarded fees, but not in amount requested, and landowner appealed.

The Supreme Court held that trial court's decision, in making award of prevailing party attorney fees to landowner in inverse condemnation action, to place greater weight on the results obtained and to award landowner only \$67,277.35 of the \$880,171.81 sought was not manifest abuse of discretion.

Trial court's decision, in making award of prevailing party attorney fees to landowner in inverse condemnation action, to place greater weight on the results obtained and to award landowner only \$67,277.35 in attorney fees, costs and expenses, not the \$880,171.81 that it sought for obtaining an inverse condemnation award in nominal amount of \$500.00, was not unmistakable or indisputable error and could not be disturbed under a "manifest abuse of discretion" standard of review.

MUNICIPAL GOVERNANCE - WASHINGTON

[Matter of Recall of White](#)

Supreme Court of Washington - October 29, 2020 - P.3d - 2020 WL 6332723

Petition was filed for recall of city councilmember based on actions that he took which allegedly undermined public response to corona virus pandemic.

The Superior Court dismissed the petition, and appeal was taken.

The Supreme Court held that:

- Charge in recall petition, that member of city council had used his position as elected official to wrongfully encourage citizens to disobey stay-at-home orders issued during corona virus pandemic, was factually and legally insufficient;
- Charge in recall petition, that councilmember had encouraging the public to disobey emergency orders issued during corona virus pandemic, such as by not wearing face mask, was both factually and legally insufficient; and
- Charge in recall petition, that member of city council had refused to attend council meetings in protest of stay-at-home orders and mask mandates issued during corona virus pandemic, was both

factually and legally insufficient.

TAX - SOUTH DAKOTA

[Flandreau Santee Sioux Tribe v. Terwilliger](#)

United States District Court, D. South Dakota, Southern Division - October 21, 2020 - Slip Copy - 2020 WL 6158920

Flandreau Santee Sioux Tribe, filed action seeking a judicial declaration that, under federal law, the State of South Dakota did not have the authority to impose the South Dakota excise tax in connection with services performed by non-Indian contractors on the Tribe's on-reservation construction project.

The District Court held that:

- The contractor's excise tax is not expressly preempted by federal law.
- The case turns on whether the imposition of the State contractor's excise tax on Henry Carlson Company, a non-Indian contractor, for construction services performed on-reservation is preempted under the Bracker balancing test.
- The federal government has a strong interest in the construction, renovation, maintenance, and safety of Indian gaming facilities and the extent of federal regulation and control weighs against imposition of the State excise tax.
- Federal interests weigh against the imposition of the State excise tax.
- The State excise tax interferes with the Tribe's interests in tribal self-sufficiency, self-determination, and sovereignty.
- The State failed to establish that the use of State services funded by the State general fund sufficient to justify the imposition of the State excise tax.
- The State's interest in being reimbursed for State services is minimal, and does not weigh in favor of imposition of the excise tax.
- The loss of the Tribe's excise tax would have a small impact to the State's budget, and more importantly, State agencies' budgets funded by the State general fund from a loss of the Tribe's excise tax.
- The State's general interest in raising revenue cannot justify the substantial burden on federal and tribal interests and weighs against imposition of the excise tax.
- The State's general regulation of the construction industry does not outweigh the tribal and federal interests in Indian gaming revenue.
- The State's interest in uniform application of the contractor's excise tax is minimal and weighs against imposition of the excise tax.
- The term "trade" as used in the Indian Trader Statutes includes the sale of construction materials and services to Indians on-reservation. Thus, the Indian Trader Statutes expressly preempt the State contractor's excise tax at issue here.
- Based on the discussion of federal and tribal interests discussed, and incorporating the federal and tribal interests under IGRA that coincide with the federal and tribal interests under the Indian Trader Statutes, the federal and tribal interests weigh against imposition of the State excise tax.

"In conclusion, the court finds that under a Bracker analysis, the State of South Dakota's interest in imposing the contractor's excise tax does not outweigh the tribal and federal interests in promoting tribal self-sufficiency and self-governance, ensuring the Tribe is the primary beneficiary of gaming, protecting gaming as a means of general tribal revenue, and securing tribal economic development. Considering all the Bracker factors, the evidence presented at trial demonstrated: (1) a strong

historical backdrop of tribal sovereignty and sovereignty in the field of Indian gaming; (2) the federal regulatory scheme of IGRA is extensive; (3) there is a strong federal interest in the construction and maintenance of Indian gaming to protect the environment and public health and safety of Indian gaming facilities and patrons while simultaneously promoting tribal self-sufficiency and strong tribal government as evidenced by the statutory structure of IGRA; (4) the Tribe's own regulation of gaming, gaming revenue and on-reservation construction is extensive; (5) the economic burden of the State excise tax falls directly on the Tribe; (6) the State excise tax places a substantial burden on the Tribe's ability to generate gaming revenue and provide essential tribal governmental programs through the Tribe's budget; (7) there is no nexus between the services or regulations funded by the State general fund and provided by the State to the Tribe, tribal members, or Henry Carlson Company and the Casino renovation project; (8) any State services provided to the Tribe, tribal members, the Casino, or Henry Carlson Company off-reservation are not connected to the Casino renovation project and minimal; (9) the State does not uniformly apply the contractor's excise tax or its Department procedures for Indian country tax exemptions; and (10) the State provides little government services funded from the general fund to the Tribe, tribal members, the Casino, or Henry Carlson Company; the State does not uniformly apply the tax; and as a result, the State can only demonstrate a general interest in raising revenue."

"The South Dakota contractor's excise tax on Henry Carlson Company's gross receipts derived from the on-reservation construction and renovation of the Royal River Casino is not per se invalid nor expressly preempted under IGRA. After considering the federal, tribal, and state interests under the Bracker balancing test, the court finds that the tax interferes with federal and tribal interests reflected in IGRA. This outweighs the State's minimal interests. Thus, the State tax is preempted under IGRA."

"Additionally, because Congress has not said otherwise, Indian Trader Statutes expressly preempt the contractor's excise tax. In the alternative, even if the Indian Trader Statutes do not expressly preempt the State tax, after considering the federal, tribal, and state interests under the Bracker balancing test, the court finds that the tax interferes with federal and tribal interests reflected in the Indian Trader Statutes. This outweighs the State's minimal interests. Thus, the State tax is preempted under the Indian Trader Statutes. Because the State's interests do not outweigh the strong federal and tribal interests under IGRA or the Indian Trader Statutes, the State contractor's excise tax is preempted under federal law."

[GASB Proposes New Implementation Guidance to Assist Stakeholders with Application of its Pronouncements.](#)

Norwalk, CT, November 17, 2020 — The Governmental Accounting Standards Board (GASB) today proposed implementation guidance in the form of questions and answers intended to clarify, explain, or elaborate on certain GASB pronouncements.

The [Exposure Draft, Implementation Guidance Update—2021](#), contains proposed new questions and answers that address application of GASB standards on leases, fiduciary activities, and other topics. The Exposure Draft also proposes amendments to previously issued implementation guidance.

The GASB periodically issues new and updated guidance to assist state and local governments in applying generally accepted accounting principles (GAAP) to specific facts and circumstances that they encounter. The GASB develops the guidance based on:

- Application issues that are raised during due process on GASB Statements
- Questions it receives throughout the year, primarily from governments and auditors, and
- Topics identified by members of the Governmental Accounting Standards Advisory Council and other stakeholders.

The guidance in Implementation Guides is cleared by the Board and constitutes Category B GAAP.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB encourages stakeholders to review the proposal and provide comments by February 15, 2021. Information about how to comment can be found at the front of the Exposure Draft.

[Real-Time Financial Reporting Improves Muni Bond Markets.](#)

A team of researchers from the UO Department of Finance found three-fold benefits when the gap in trade reporting in municipal bond markets changed from a full day to fifteen minutes after implementation of the Real-Time Transaction Reporting System.

Their findings demonstrate that municipalities can benefit from the real-time reporting system through more efficient capital markets, creating benefits for society because municipal bond offerings fund infrastructure investments that often improve quality of life, education and public safety.

In "[The Difference a Day Makes: Timely Disclosure and Trading Efficiency in the Muni Market](#)," which was published online ahead of print in the Journal of Financial Economics, the authors John Chalmers and Z. Jay Wang, professors of finance in the Lundquist College of Business at the University of Oregon, and Steve Yu Liu, who earned a doctorate at the UO and is now with the Department of Business and Information Technology at the Missouri University of Science and Technology, assess the reporting system's impact on muni markets.

By assessing data surrounding the time that Real-Time Transaction Reporting System was implemented, the study demonstrates how real-time price discovery has transformed municipal bond trading, investing and, potentially, the cost of financing civic projects. The researchers argue that faster and more accurate disclosure in the \$4 trillion over-the-counter municipal bond market leads to efficiencies that are likely to benefit investors, issuers and ultimately taxpayers.

"First, we find a significant reduction in transaction costs that varies with investor sophistication," they wrote in the paper. "Second, we find significant increases in municipal trading volume across the liquidity spectrum. Third, we find that dealers increased market-making activities after the introduction of the Real-Time Transaction Reporting System."

An alternative explanation for the findings, they noted, is that they could reflect overall improvement in access to information in over-the-counter markets due to the increased use of online resources in the period surrounding the implementation of the real-time reporting system. To address this concern, the authors selected a subset of corporate bonds as a control group.

These corporate bonds were not subject to similar changes in disclosure requirement in the sample period and should have captured the impact of common improvements to the over-the-counter markets. By comparing the changes in trading costs between the municipal bonds and the control group, the authors were able to isolate the effects of Real-Time Transaction Reporting System, apart from other factors.

More timely disclosure in the municipal bond markets was a particular boon to investors, with the average trading costs declining by 30 basis points or 14 percent. Interestingly, they noted, the impact of the real-time reporting varies significantly across investor sophistication. While retail investors benefited mainly from a reduction in dealer's costs of intermediating trades, sophisticated traders were able to take advantage of more timely trading information and negotiate better trading terms with dealers, reflecting improved bargaining positions.

The authors also studied the impact of the reporting system on bond dealers' market making activities. They find an increase in trading volume for all bond liquidity groups sorted by pre-RTRS trading volume. Consistent with this, the researchers found, dealers committed more capital and were more actively engaged in intermediating municipal bond trading in the post-RTRS period. These findings alleviate concerns that bond dealers may decrease market-making efforts due to deteriorating bargaining positions.

While switching to real-time reporting incurs additional costs, the research suggests that the sacrifices are likely to be well worth it for both investors and bond dealers. Further, by taking costs out of the system and improving investor welfare, municipalities benefit.

—By Michael Maiello, for the Lundquist College of Business

November 11, 2020

[Municipal Bonds: The State Of The States](#)

Summary

- The media has been rife with headlines foretelling revenue shortfalls and a cash crisis for battered state budgets.
- We look under the hood to better assess the status of the headline-grabbing states with the largest debt burdens.
- Bond investors are right to be concerned.

As COVID-19 continues to slow the economy, the media has been rife with headlines foretelling revenue shortfalls and a cash crisis for battered state budgets. We look under the hood to better assess the status of the headline-grabbing states with the largest debt burdens.

[Continue reading.](#)

Seeking Alpha

Nov. 11, 2020

[Amid a Spate of New Issuance, Municipal Bonds Stand Strong.](#)

Municipal bonds and exchange traded funds, including the iShares National Muni Bond ETF (NYSEArca: MUB), are proving sturdy in the face of a raft of new issuance in the space.

MUB, the largest municipal bond ETF by assets, seeks to track the investment results of the S&P

National AMT-Free Municipal Bond Index™. The fund generally will invest at least 90% of its assets in the component securities of the underlying index and may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents. The index measures the performance of the investment-grade segment of the U.S. municipal bond market.

MUB YTD Performance

“Municipals posted modestly negative total returns in October, with the S&P Municipal Bond Index finishing the month down -0.14%,” according to BlackRock research. “Interest rates moved higher as economic data remained firm and the market began to price in an increased likelihood of a Democratic sweep, which, at the time of this writing, appears unlikely. (Bond prices fall when rates rise.) Credit sectors fared better than the more rate-sensitive segments. Muni-to-Treasury ratios in the intermediate and long end of the yield curve declined, but remain high versus the historical average.”

Municipal Bonds Are Resilient

Yields on munis have been steadily falling with bond prices rising even before the coronavirus hubbub. After the 2017 tax law changes, demand for tax-exempt munis became more attractive in response to caps in the federal deduction for state and local taxes, especially among higher-tax states. The tax law also diminished supply due to new limits on when governments can issue tax-exempt debt.

Due to the economic shutdown, which led to a spike in unemployment rates across the country, plenty of states are facing budget woes. Some of those with the worst shortfalls are among the largest issuers of municipal bonds, meaning they're also among the biggest weights in this category's ETFs. However, to this point, the muni market is proving resilient.

“October posted the largest monthly issuance on record at \$71 billion. Municipalities pulled forward deals ahead of anticipated election uncertainty. Despite the acceleration, supply was well absorbed given the expectation for a corresponding dearth of issuance in November and December. On average, new deals were oversubscribed by 4.6 times, up from 4.2 in September,” according to BlackRock.

ETF TRENDS

by TOM LYDON on NOVEMBER 12, 2020

[More High-Yield Muni Borrowers Are Defaulting but Investors Still Want In.](#)

Prices on risky bonds have climbed even as repayment troubles have mounted

Covid-19 is wreaking havoc on the market for risky municipal bonds. Investors desperate for tax-exempt yield are still piling in.

Fixed-income returns that come with a tax break have become so precious to affluent American households that they are willing to overlook a spike in defaults, growing reports of repayment trouble and contagion risks of communal living projects.

The S&P Municipal Bond High Yield Index is now only about 1% lower than its pre-coronavirus

pandemic level, despite falling 15% in March as global shutdowns roiled the market.

The Federal Reserve stepped in at that time to backstop a variety of assets including municipal bonds, resetting investor expectations about how much risk the pandemic poses to a range of markets from stocks to commodities to corporate and muni debt.

[Continue reading.](#)

The Wall Street Journal

By Heather Gillers

Nov. 13, 2020 8:00 am ET

[Biggest Source of Tax Revenue in Every State.](#)

Stacker used survey data from Pew Charitable Trusts, which analyzed tax revenue for U.S. states for the 2019 financial year. For each state, it found the biggest source of tax revenue from the following categories—personal income, corporate, general sales, selective sales, severance, licenses, and property. The data was released in June 2020.

The 50 states have carved out their own ways to collect taxes from their residents and businesses. Those states rich in natural resources collect severance taxes on oil and natural gas extraction, while Delaware trains its tax eye on corporations. Most stick to more typical personal income and sales taxes.

Nearly every state employs progressive ways of taxing the rich more than the poor, although several use flat-rate income taxes that take a much bigger relative bite out of low incomes than of big salaries. And in many states, sales taxes, the most regressive levy of all, comprise the biggest source of public revenue.

The size of tax revenues range from the enormous \$188 billion collected last year by the state of California to the far more modest \$1.78 billion pocketed by the state of Alaska.

People everywhere love to complain about the taxes they pay, but a survey taken this year found 48% of people thought the amount of taxes they paid were about right, and more than the 46% who thought their taxes were too high. Another 3% thought the taxes they paid were too low.

Check out the list to see what kinds of tax dollars your state collects, and how it compares with the rest of the country.

[View the list.](#)

dbrnews.com

Ellen Dewitt | Nov 13, 2020

GFOA Working Group Focusing on Libor Transition.

The Government Finance Officers Association has formed a working group to help issuers prepare for the phase-out of Libor at the end of 2021.

The group of around a dozen issuers, bankers, broker-dealers, bond attorneys, and municipal advisors will meet Tuesday for their second time to sort out their priorities for educating the public finance community.

“We’re all looking at it from our different perspectives at what we can do in our respective roles to get the word out about the Libor transition and that the issuers who have that exposure are aware of it,” said Cindy Harris, chief financial officer of the Iowa Finance Authority who is chairing the working group.

The working group plans to meet every other week to develop instructions to guide participants in the municipal bond market to make the transition.

“I feel that the Libor transition is probably not on the top of people’s minds,” said Harris, “Even if they have Libor they may think it’s not as pressing a matter to deal with than a lot of the other challenges they are having to deal with in their jurisdiction. That’s why I think it’s good to get the word out that this is coming sooner than people may think. If you are changing contracts, you may need board approvals to do that. And that may need a month or two of lead time.”

The International Swaps and Derivatives Association announced Oct. 23 its IBOR Fallbacks Supplement and IBOR Fallbacks Protocol.

“While fallbacks aren’t designed to be a primary means of transitioning from Libor and other IBORs, they do mean a critical safety net will be in place for those participants that still have exposure to IBORs when a cessation or non-representativeness announcement is made,” ISDA General Counsel Katherine Tew Darras said in a speech Monday.

ISDA said the supplement amends its standard definitions for interest rate derivatives to incorporate robust fallbacks for derivatives linked to certain IBORs, with the changes coming into effect on January 25, 2021. From that date, all new cleared and non-cleared derivatives that reference the definitions will include the fallbacks.

“During this period the fee is free for non-primary dealers,” said Harris. “After January 25, new transactions will automatically contain the fallback language via the supplement. However, adherence to the protocol after January 25 for legacy contracts will incur the \$500 fee. To avoid the fee, issuers can also execute bilateral amendments.”

The \$500 fee applies to each legal entity unless they have agency authority.

Additionally, ISDA said the protocol will enable market participants to incorporate the revisions into their legacy non-cleared derivatives trades with other counterparties that choose to adhere to the protocol. The protocol has been open for adherence since the Oct. 23 date of the announcement and also becomes effective on Jan. 25 with the supplement.

By the end of next month, the United Kingdom’s Financial Conduct Authority is expected to officially declare Libor as nonrepresentative, which will establish an endpoint for this reference rate.

Harris said the endpoint will be used as a reference date for establishing a five-year lookback for a new reference rate.

“The announcement date will determine the five-year median window for purposes of calculating the fallback rate spread adjustment,” Harris said. “The spread adjustment is based on the median five-year historical difference between LIBOR and SOFR compounded over each corresponding period.”

Harris said GFOA is likely to advise issuers to consult with their swap advisor or qualified independent representative (QIR) to help them navigate that transition.

Harris said she intends to have her swap advisor perform a historical five-year regression of the Secured Overnight Financing Rate (SOFR) plus the spread for Libor and a separate calculation using the SIFMA rate as an alternative.

“GFOA will ramp up its effort to get the word out about Libor,” she said. “The industry will also try to get together some guiding principles and not create new resources, but to aggregate them.”

The group also wants to make the resources understandable to issuers who may only have used Libor occasionally and aren’t familiar with the terminology.

In addition, the GFOA debt committee has a subgroup that reviewing GFOA’s best practices to determine is any updates are needed.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 11/10/20 01:43 PM EST

[The Mnuchin-Powell Dream Team Faces Its Biggest Test.](#)

The Treasury has resisted extending the Fed’s lending programs past year-end. Political pressure will only complicate the decision.

Throughout the U.S. coronavirus crisis, investors have viewed Federal Reserve Chair Jerome Powell and Treasury Secretary Steven Mnuchin as steady leaders who are capable of steering the world’s largest economy through uncharted waters. They have appeared together before Congress to give updates on their joint emergency lending programs, which helped restore smooth functioning to corporate-bond and municipal-debt markets. Even when elected officials in both parties dragged their feet on another round of fiscal aid, traders could seemingly rest easy knowing that the Mnuchin-Powell duo would remain above politics and keep markets and the economy on the right track.

That was before last week’s U.S. elections, which showed Joe Biden winning the presidency while Republicans appear likely to retain control of the Senate. Now it seems Democrats and Republicans are jockeying for power, and Mnuchin risks being thrown into the fray as well, given that his time as Treasury Secretary is presumably drawing to a close.

The most pressing issue on the table is whether to extend some or all of the Fed’s emergency lending programs, which are set to expire on Dec. 31. The Municipal Liquidity Facility, for instance, which offers a backstop to state and local governments, will only accept notices of interest for loans at least 30 days before year-end, according to a central bank statement last month. So as it stands, three weeks from now, no state or city will be able to turn to the Fed to issue bonds at a known interest rate if Covid-19 outbreaks threaten their residents and economies.

[Continue reading.](#)

Bloomberg Opinion

By Brian Chappatta

November 12, 2020, 3:30 AM PST

[What Does President-Elect Joe Biden's Presidency Mean for Municipal Debt Markets?](#)

In more ways than one, the 2020 American presidential election was a historic one: Joseph R. Biden, the 46th president of the U.S., will be the oldest president to take office and his VP will be the first female to hold the office of vice president in American history.

Aside from these historical measures, many investors are trying to decipher the president-elect Joe Biden's fiscal policies and their impact on the fixed income markets. Furthermore, given the rapid increase in COVID-19 cases throughout the world, how is he going to prioritize his efforts for local governments to ease their financial strains and revive the impaired revenue sources?

In this article, we will take a closer look at President-elect Biden's election promises and how they will likely materialize in the upcoming years.

Financially Strapped Local and State Governments

It is no secret that all local and state governments are faced with some serious liquidity challenges due to their impaired revenue sources due to COVID-19. These challenges are also worsened by the additional expenditures required by these government bodies to combat COVID-19 and provide testing in their respective jurisdictions - which they may not have been prepared or budgeted for.

President-elect Joe Biden will likely get the next stimulus bill passed; this bill has already gone through the House of Representatives, and the Senate has shown some interest in prioritizing this bill post-election. This will not only be a victory for President-elect Biden's camp, but also a piece of legislation that can provide over \$436 million in funding for local and state governments. This bill mirrors the earlier tranches of COVID-19 financial help from the federal government, where the local governments submitted their respective claims for funding based on the lost revenues due to COVID-19.

Furthermore, the transportation agencies throughout the U.S. have been one the hardest hit local government agencies. This is strictly because these agencies rely heavily on the ridership volumes for the revenues. Since March, 2020, all - from small and midsize to large - transportation agencies have been severely impacted by the Coronavirus shutdowns and companies allowing their employees to work remotely. The inevitable shelter-in-place orders throughout the U.S. have delivered the hardest blow for these agencies. If passed, this new stimulus bill can be a life saver particularly for transportation agencies including light rail and bus systems.

Be sure to check out our previous article here on how the local government's fiscal resilience is going to be tested long after the COVID-19.

Infrastructure Push and Green Energy Promises

Almost every president in recent history has highlighted the dire need to fix and revamp America's infrastructure, including bridges, highways, airports and much more. President-elect Biden is no different in his promises.

The federal funding required to undertake these projects will be great for the municipal debt market, and local and state labor markets. It's also important to note that many of the infrastructure projects will require Public-Private Partnerships (PPPs) that will help infuse private and public capital into the markets. For example: airports, hospitals, water and sewerage systems and transportation projects, etc., are often built with a PPP, where the local government utilizes their ability to issue municipal debt and partner with a corporation to complete the project.

President-elect Biden also talked about the need to limit our dependency on oil and spend more on developing greener alternatives of energy. These efforts can potentially reignite the conversation about Green Debt issued by municipalities in order to fund projects that may include renewable and energy efficiency projects, pollution prevention and control, clean public transportation conservation, green buildings, and sustainable water and wastewater management.

Potential Changes to the Marginal Tax Rates

Although tough without the democratic control of the Senate, President-elect Joe Biden promised some sweeping changes to the tax-code structure based on the income levels where the marginal tax rates is likely to see a hike for the wealthiest Americans; in-turn, increasing the demand for municipal debt investments to capitalize on the tax-exempt income from local, state and federal taxes.

Under Biden's tax plan, individual taxpayers earning more than \$400,000 annually would be taxed at 39.6%, up from 37% currently, and subject to an additional 12.4% Social Security tax on wages split equally with their employer. These changes to the marginal tax rates will make tax-exempt income more lucrative for individuals in higher tax brackets, in turn, driving up demand for local government debt.

President-elect Biden has also promised to restore the earlier corporate tax rates for corporations.

The Bottom Line

Although many things are still unclear about the control of the American Senate, which is the key for President-elect Biden to fulfil many of his campaign promises, American voters have chosen a leader who can work with both sides of the aisle on issues that transcend party lines - American infrastructure and reviving the American economy post COVID-19.

It's clear that the American economy has some challenging times ahead; but, with bi-partisan decision-making, these challenges can be overcome for the betterment of America.

dividend.com

Nov 11, 2020

[Municipal Bonds Faring Well Despite Election/Pandemic Uncertainty.](#)

The municipal and state bond markets are not being hurt as badly as expected prior to the election

and before progress was made on a Covid-19 vaccine, according to Adam Stern, senior vice president and director of municipal research at Breckinridge Capital Advisors, a Boston-based financial services firm with \$42 billion in assets under management.

Because Democrats did not take control of the Senate (pending run-off elections in Georgia), there is less likelihood of tax increases in the near future, which should lessen the upward pressure on prices and downward pressure on yields that had been predicted before the election, Stern said in an interview today.

At the same time, a vaccine that could begin distribution sooner rather than later will lessen the need for more stimulus money for municipalities and states, he added. Senate Majority Leader Mitch McConnell has indicated he would like to pass a new stimulus package in the lame duck session of Congress that would be less than the \$1.5 trillion discussed before the election.

“More fiscal support is likely necessary to maintain the current recovery,” according to a Breckinridge research report. “For munis, additional federal aid would reduce fiscal pressure.” At the same time, “state and local issuers have significantly reduced their payrolls. Service cuts of this sort are beneficial to credit quality in the near-term. However, maintaining these cuts indefinitely will prove challenging.”

Tax-free municipal bonds should still be readily available in the near future, Stern said. “But we find that ratings downgrades are likely regardless of the federal response. Mass transportation issuers would unquestionably benefit from increased federal aid.”

Financial advisors should be on the alert for municipalities and states, such as Chicago and Illinois, that are in dire financial circumstances, he added. Illinois’ credit rating has been downgraded to junk bond status in recent days. Although that is not typical of all states, Illinois presents the type of circumstances advisors should be aware of.

On the plus side, essential service municipal bond issuers have managed through the Covid-19 pandemic better than expected. Loose fiscal and monetary policy, coupled with better management of the virus, has helped limit the worst case outcomes, Stern said in a Breckinridge report. “We anticipate a challenging, but manageable, next several months” for bond investors.”

Breckinridge said a combination of factors has contributed to a less dire outlook than was predicted a few weeks ago. For starters, fiscal stimulus provided under the CARES Act has been effective as transfer payments averaged 8% of U.S. personal income between April and August 2020, and these payments likely produced higher-than-expected sales and income tax collections.

In addition, very low interest rates likely allowed some borrowers to refinance maturing obligations to avoid credit mishaps, as well as enabling a significant amount of debt refinancing.

Finally, people have done a better job of managing and adapting to the coronavirus.

ETF TRENDS

NOVEMBER 11, 2020 | KAREN DEMASTERS

[Public Finance Sector Optimistic about Biden Presidency.](#)

Public finance sector officials are optimistic a Joe Biden presidency will mean strong financial support for state and local governments as well as robust infrastructure legislation.

They also are hopeful the negative impacts of a federal tax overhaul enacted in 2017 will be reversed.

The Associated Press called the presidential race in favor of Biden Saturday based on the vote count in Pennsylvania, where mail-in votes pushed him into a lead projected to be insurmountable. Pennsylvania's 20 electoral votes would be more than enough to push Biden past the 270 electoral votes needed to claim victory.

President Trump, however, has not conceded and his campaign has filed lawsuits in several battleground states contesting the results.

"If Biden is ultimately determined to be president, and even with a Republican Senate, there will be tremendous opportunities for infrastructure, bond, and other legislation and regulatory actions," said Charles Samuels, of Mintz Levin, counsel to the National Association of Health & Educational Facilities Finance Authorities.

His organization represents includes smaller nonprofit hospitals and colleges that would benefit from proposed legislation to would increase to \$30 million from the current \$10 million, the limit on small borrowers to use bank-qualified bonds. That provision is part of the House-passed Moving America Forward Act that has been blocked by the Senate.

In the next Congress that takes office Jan. 3, the House bill would need to be reintroduced and most likely modified to include provisions favored by the new administration.

Biden "has a deep understanding of municipal finance and the roles that tax-exempt bonds play to build American infrastructure," said former President of the U.S. Conference of Mayors Steve Benjamin, who is the mayor of Columbia, S.C., and president of Municipal Bonds for America.

Benjamin dealt with Biden when the former vice president was spearheading the Obama administration's implementation of the 2009 American Recovery and Reinvestment Act.

"I know from conversations with him and all his senior policy folks that infrastructure is at the very top of his list," Benjamin said. "We will have the preservation of the tax exemption and a number of creative looks at delivering infrastructure all across the country."

Pension funds, institutional investors, and sovereign wealth funds are eager to invest in American infrastructure that will create millions of jobs, Benjamin said.

Emily Brock, director of the federal liaison center at the Government Finance Officers Association who founded the Public Finance network as the voice of issuer groups on Washington policy issues, said her organization looks forward to meeting with Biden.

"We're thrilled to talk with him with our coalition's efforts to enhance the municipal bond market," Brock said.

Brock said members are encouraged by Biden's support of municipal finance in the past, but wary whether Biden will pursue placing a 28% limit on personal tax deductions.

Benjamin said he had discussions with Biden when he was vice president explaining to him the municipal bond industry's opposition to the 28% limit on deductions.

The Bond Dealers of America was hesitant to discuss a Biden presidency, predicting ongoing litigation will bring uncertainty for weeks.

Mike Nicholas, CEO of BDA, said no matter who is in the White House, he is optimistic for bond initiatives in 2021, including in a future infrastructure bill.

A Biden presidency will make federal infrastructure legislation more doable, said Patrick Luby, senior municipal strategist at CreditSights. The Trump administration also saw infrastructure as a priority, but more in the sense of providing seed money, he said.

“There is a philosophical difference with a Democrat administration that they would be more willing to provide a greater share of federal funding to an infrastructure project,” Luby said.

Biden’s Build Back Better infrastructure plan has many of the same elements of the \$1.5 trillion muni-friendly Moving America Forward legislation passed by House Democrats. That House bill includes many municipal bond provisions such as an increase of the limit on small issuer bank-qualified bonds to \$30 million and a new program of qualified school infrastructure bonds.

It also includes upgrades to smart roads, water systems, municipal transit networks, schools, airports, rail, ferries, ports, and calls for universal broadband access.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 11/07/20 12:24 PM EST

[**What Does President-elect Joe Biden’s Presidency Mean for Municipal Debt Markets?**](#)

In more ways than one, the 2020 American presidential election was a historic one: Joseph R. Biden, the 46th president of the U.S., will be the oldest president to take office and his VP will be the first female to hold the office of vice president in American history.

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In this article, we will take a closer look at President-elect Biden’s election promises and how they will likely materialize in the upcoming years.

[Continue reading.](#)

municipalbonds.com

by Jayden Sangha

Nov 11, 2020

Five Ways The Biden Administration May Affect U.S. Transportation.

With a new President comes new priorities and direction, and the Biden administration will hit the ground running in January. The Federal Government makes policies that affect how goods and people move, so it is likely that changes in how this happens are afoot. Here are five ways that a Biden administration will likely affect U.S. transportation policy:

Increased Government Spending

Most presidents have liked to spend money, but a Biden presidency will likely encourage the lame duck session to pass a stimulus package that in part would help the airlines again. More importantly, a Biden administration is likely to drive a true infrastructure bill that could have positive impacts on airports and air traffic control at least. Of course highways and rail can benefit as well, and perhaps drone technology too. Our economy needs people and goods to move freely and efficiently, and thus any infrastructure spend would be focused on making this happen while improving safety for consumers.

Amtrak Stays On Track

“Amtrak Joe” has been a life-long supporter of the National Passenger Rail Service, and has spoken often of the efficiency of trains. While I wouldn’t expect a Biden administration to favor trains over airplanes for most intercity travel, I would expect major funding to Amtrak to allow the railroad to invest in its rolling stock, trackage, and fund longer haul train losses. Any talks of privatizing Amtrak will likely be squashed during this presidency, and the leadership at Amtrak will have the strongest possible supporter in the White House.

Federal Minimum Wage Standards Could Raise Local Costs

Federal efforts to raise the minimum wage, already addressed by some states, would help those at the lower end of the pay scales but also raise costs for smaller local transportation operators among others. This possibly could reduce air service to smaller cities, if an increase in the cost of servicing the plane makes the trip uneconomic. More likely, prices to travel by train, plane, and car would increase a bit to cover this higher labor cost. In a highly price elastic market, this would result in somewhat lower demand.

More Regulation

Transportation in the U.S. is highly regulated the areas of safety, licensing, and maintenance. But consumer advocacy focused regulation, active in the Obama administration but quiet for the last four years, may re-appear though airlines will push against this. This could be focused in areas of ancillary revenue charges, seating density, taxes that would be passed through to customers, refund ability, and more. In cars, improved gas efficiency standards could raise the purchase cost of automobiles and trucks. Less likely but perhaps considered would be investment by foreign companies in US airlines or for foreign airlines to fly within the US. Also, as airlines restructure due to demand losses this administration’s views on potential merger agreements will likely change from the current president. It’s hard to underestimate the creativity with which regulators will wish to control business, and transportation is ripe for this kind of approach.

Support For Organized Labor

The U.S. Airlines and Railroads are highly unionized industries, and a Biden administration with a

more progressive labor agenda will be friendly to collective bargaining. This would have no immediate impact on deals currently in place, but could change the tone of future negotiations. Labor in these areas is governed not by typical U.S. Labor law, but by the Railway Labor Act. This act, meant to reduce disruptions in the national transportation networks, makes negotiations drag out at times and in extreme cases could make a Presidential Emergency Board decision requested to stop a planned work action. Thinking this could happen in four years is not realistic, and yet workers in the national U.S. transportation businesses, like the Amtrak employees, will know they have a president that backs them.

Forbes

by Ben Baldanza

Nov 9, 2020

[States and Localities Shouldn't Count on More Federal Aid.](#)

Mitch McConnell and other Republicans are opposed to further aid for states and localities. It looks like the Senate will stay in GOP hands, so prospects for relief next year have dimmed.

President-elect Joe Biden most likely will be dealing with a Senate led by Republican Mitch McConnell. That bodes ill for a lot of Democratic hopes, including major fiscal relief for states and localities.

It takes two sides to make a deal, so perhaps there's something Democrats can trade in exchange for more aid. But that's been the expectation for months now and McConnell hasn't budged.

"Sen. McConnell has put down the marker pretty strongly about why they think a bailout of the states is a bad idea," says Jonathan Williams, chief economist at the American Legislative Exchange Council. "I tend to think that Senate Republicans will hold together and say there are more effective ways to spend money than to send it to state and local governments as a pass-through."

[Continue reading.](#)

GOVERNING.COM

ALAN GREENBLATT, SENIOR STAFF WRITER | NOVEMBER 9, 2020

[Fed's Mester Says All Emergency Lending Facilities Should Be Extended.](#)

(Reuters) - The emergency lending programs the Federal Reserve set up during the coronavirus pandemic have eased distress in financial markets and are still needed, Cleveland Federal Reserve Bank President Loretta Mester said on Monday.

In addition to slashing interest rates to near zero levels in March and ramping up its asset purchases, the Fed set up a slate of emergency lending facilities to support the markets for commercial paper, municipal bonds, corporate debt and more.

While some of the programs have been lightly used, Mester said their presence serves as a backstop that helps to smooth markets that are not yet in the clear after being disrupted because of the pandemic, she said.

“I don’t think we’re out of the extraordinary situation that they’re meant to help with,” Mester told reporters. “I think they are needed at this point, given where we are.”

Fed Chair Jerome Powell will be working with the Treasury Department to determine if the programs should be extended beyond the end of the year, Mester said.

“But in my view, if it were me, I would extend all of them,” Mester said. “The fact that they exist provides confidence to the markets.”

The policymaker stressed that the Fed is not out of ammunition when it comes to stimulating the economy and that it could provide more accommodation by adjusting its asset purchase program and using other tools.

Mester also said that the economy rebounded more strongly than she expected, but gains have not been evenly spread. Despite promising news on Monday about a vaccine being developed by Pfizer PFE.N and BioNTech 22UAY.F, Mester said she thinks economic growth will happen more slowly going forward.

The economy will need support from both fiscal and monetary policy to fully recovery, she said. “There’s still a long way to go.”

By Jonnelle Marte

NOVEMBER 9, 2020

Reporting by Jonnelle Marte; Editing by Chris Reese and Aurora Ellis

[Federal Reserve’s Emergency Loan Programs at Center of Political Fight.](#)

Democrats are eyeing the programs as a backup option if they can’t strike a deal to aid states and localities, and believe they may be needed to backstop markets. Republicans want them off the table.

WASHINGTON — A political fight is brewing over whether to extend critical programs that the Federal Reserve rolled out to help keep credit flowing to companies and municipalities amid the pandemic-induced recession.

The dispute has the potential to roil financial markets, which have calmed significantly since the Fed announced in March and April that it would set up backstops in response to market turmoil spurred by the coronavirus pandemic.

Those programs expire on Dec. 31, and it is unclear whether the Trump administration will agree to extend them. The Federal Reserve chair, Jerome H. Powell, and Treasury secretary, Steven Mnuchin, must together decide whether they will continue the programs — including one that buys state and local bonds, another purchasing corporate debt and another that makes loans to small and medium-size businesses. The officials will probably make that decision by early to mid-December, according

to a senior Treasury Department official.

The Fed might be inclined to keep the efforts going, but Mr. Mnuchin, whose Treasury Department provides the funding backing up the programs, has signaled that he would favor ending the one that buys municipal bonds. And he is under growing pressure from Republicans to allow all five of the Treasury-backed programs to sunset.

Senator Patrick J. Toomey, a Pennsylvania Republican who could soon lead the Senate Banking Committee, is arguing that the Fed and Treasury do not have the legal authority to extend new loans or buy new securities beyond this year without congressional approval, according to a person familiar with the matter. While that view is disputed by legal experts, Mr. Toomey also believes it was Congress's intent for the relief programs to end on Dec. 31.

The programs's expiration could come at exactly the wrong moment, as the U.S. faces an expected surge in coronavirus cases this winter and as fiscal stimulus measures that Congress passed in the spring fade. While lawmakers have toyed with passing a new relief bill before next year during the lame-duck session of Congress, President Trump's election loss makes the outcome highly uncertain.

"Cliffing the programs at year-end would be ill advised, opening markets up to a year-end disruption," said Scott Miner, the global chief investment officer at Guggenheim Partners, who expects the programs to be extended.

Mr. Mnuchin has made clear in responses to congressional questioning that he does not favor extending the municipal bond program. While Mr. Mnuchin's comment was specific to that effort, a senior Treasury official laid out reasons for allowing the others to end, mainly centered on a belief that the worst of the economic crisis has passed and the programs should not be a replacement for support from Congress.

But the programs are mostly designed as backup options: The financial terms for buying state and local debt, for instance, are not generous enough to compete in a market functioning well, and the corporate bond program is now making only small-scale purchases. Their main purpose has been to reassure investors that the central bank is there as a last-ditch option if conditions worsen.

Economists and analysts say there is logic in keeping that option open until a vaccine is widespread and the crisis is clearly over — and there is plenty of capacity left in the Fed's programs to buy more debt and make more loans. But the central bank cannot make material changes to the programs' terms to keep them running into 2021 without the Treasury's signoff.

Some Democrats had begun eyeing the municipal program as a backup option in the event that state and local government relief proved hard to pass through Congress. While the program's terms are unattractive now, they could in theory be sweetened under a Biden administration Treasury Department. Taking that program off the table would leave Democrats with fewer options — and give Republicans another bargaining chip in stimulus negotiations.

Mr. Toomey has talked about limiting the backstop programs for months, on the basis that they are no longer needed and might discourage private investment. Politico reported last week that he would favor letting all the programs end.

Lawyers generally agree that the Fed and Treasury can extend the programs without Congress — the way they are structured means that the Treasury has already made loans to the Fed, which then uses that money to insure against risk as it buys bonds and makes loans. The law that provided the funding allows such "existing" loans made from the government appropriation to remain

outstanding.

Democrats also disagree with Mr. Toomey's take.

"It's clear that the Fed and the Treasury have the authority to extend the facilities, and they should," said Bharat Ramamurti, a Democratic member of the Congressional Oversight Commission, which oversees the programs. "There is continuing need for municipalities and smaller businesses, and there is a significant chance of market disruption if these facilities are not extended."

Senators Sherrod Brown of Ohio, Elizabeth Warren of Massachusetts, Mark Warner of Virginia and Chuck Schumer of New York — all powerful Democrats — sent Mr. Powell and Mr. Mnuchin a letter last week saying that the law "is clear that these facilities can be extended" on the Treasury and Fed's authority and that "failing to signal the agencies intent now creates undue uncertainty and threatens the programs ability to promote economic recovery."

If a coronavirus vaccine is rolled out in the coming weeks, the Treasury Department may be less inclined to extend the programs. Mr. Trump could also block a reauthorization by pressuring Mr. Mnuchin, leaving Mr. Biden with fewer economic stimulus tools at his disposal.

There are some signs that the programs could expire without causing a catastrophe. Markets are functioning normally now, having calmed after the Fed signaled that it would set up the backstops. It might be that investors have overcome the panic of the spring and no longer need a backup option from the Treasury and Fed.

But it is also possible that the comfort and security provided by a Fed backstop is still needed.

Millions of people remain out of work, the service sector continues to be hard hit, and state and local governments are facing budget shortfalls, albeit smaller ones than some had initially projected. Further shutdowns, even localized ones, amid rising coronavirus cases could cause a reversal in risk taking that roils markets once more.

"Some market participants have asserted that the expiration" of the municipal program "may be a nonevent since its existence is not essential for market functioning any more," market analysts at Citigroup wrote in a recent research note. "These assertions are wrong, in our view."

Analysts interviewed by The New York Times were divided on what ending the programs could mean for markets. Some believed they could function on their own, with the economy recovering nicely. Others pointed to risks looming ahead and suggested that removing the backstop now would be a bad idea.

"You need to see those facilities extended, particularly if you're not going to see stimulus," Matthew Luzzetti, the chief U.S. economist at Deutsche Bank, said in an interview last week. "Just having that backstop has been a really important signal to the market that the Fed is there."

Asked at a news conference last week whether the programs would be extended, the Fed chair demurred.

"We are just now turning to that question," Mr. Powell said. "We've had a lot of things to work our way through."

After the news conference, Michael Feroli, an economist at JPMorgan Chase & Company, wrote in a research note that for the programs to be extended, "not only will the Fed Board have to decide that it is needed, but Treasury will also have to be convinced that it is both needed and legal."

The New York Times

By Jeanna Smialek and Alan Rappeport

Nov. 9, 2020

[Political Battle Looms Over Fed's Emergency Loan Programs.](#)

Treasury Department faces pressure to allow lending backstops to expire, but some Fed officials fear the move could be premature

The success of the Federal Reserve's emergency lending programs in stabilizing financial markets is fueling a political battle over whether the programs should be extended.

Divisions over their future are being amplified by partisan gridlock in Congress over whether to provide more economic stimulus. Democrats, looking ahead to President-elect Joe Biden's inauguration in January, see the programs as a potential tool to deliver more aid if Congress doesn't act, while some Republicans are worried about relying on central bank lending powers as a substitute for congressional spending decisions.

The tussle could open a divide between the Fed and the Treasury Department, which have mostly collaborated smoothly this year over providing emergency support after the coronavirus pandemic convulsed Wall Street. The Treasury launched the programs with the central bank in March and April after that turmoil threatened to freeze the flow of credit to small businesses, large companies, cities and states.

[Continue reading.](#)

The Wall Street Journal

By Nick Timiraos

Nov. 10, 2020 2:42 pm ET

[With the Election Over, Will Covid Stimulus Actually Move Forward?](#)

Sen. Majority Leader Mitch McConnell said Congress needs to approve a coronavirus aid package before the end of the year.

Senate Majority Leader Mitch McConnell on Wednesday said approval of another coronavirus stimulus package before the end of the year would be his top priority when the Senate reconvenes next week. Funding for state and local governments, a sticking point in prior negotiations, could also be considered, he said.

"We need another rescue package," McConnell said during a press conference in Kentucky, where he won reelection. "Hopefully the partisan passions that prevented us from doing another rescue package will subside with the election. And I think we need to do it and I think we need to do it before the end of the year."

The Senate will be back in session Monday, and McConnell said a stimulus deal and omnibus spending bill to keep the government open will be the focus in the coming months. He had earlier suggested that a deal was not likely until early next year.

Talks over another possible coronavirus stimulus bill had stalled for months ahead of the election as Senate Republicans, House Democrats and the Trump administration were unable to come to agreement on a deal. Disagreement about a potential package continued, even as unemployment figures suggested a slow down in the economic recovery. Local and state officials also lobbied for more help, saying they are still spending money to respond to the pandemic, while tax revenues shrank during the economic downturn.

State and local governments will still need financial support even if the coronavirus pandemic subsides over the winter, said Mike Leachman, vice president of state fiscal policy at the Center for Budget and Policy Priorities. State and local governments have furloughed or laid off 1.2 million workers, and are likely to face budget shortfalls exceeding \$500 billion over the next two years, he said.

“The economic decline we’ve seen this year is entirely due to the pandemic,” Leachman said. “That’s why state revenues are down and that’s why they need aid.”

But with Republicans less receptive to the idea of providing financial assistance to state and local governments, the results of the election will have implications for any future aid package.

As the vote count in battleground states continued Wednesday, Wisconsin and Michigan were called for Democratic presidential candidate Joe Biden, making it more likely he would beat President Trump. Republicans appeared likely to retain control of the Senate, while Democrats kept the House.

But exactly how those dynamics will play out remain uncertain. In the days leading up to the election, Trump expressed renewed support for more financial aid to help people and businesses affected by the pandemic. It isn’t clear what the president’s position will be if he is voted out of office and asked to consider a new package during a lame duck session.

Before the election, House Speaker Nancy Pelosi also emphasized that she remained far apart from the White House on key points, including financial aid for state and local governments.

McConnell said Wednesday he’d be open to the possibility that state and local assistance is included in a stimulus bill, but he said funding may need to be curtailed to localities that can demonstrate certain levels of need in order to qualify.

“It’s a big item for Democrats and it is not something my side is very fond of because it’s hard to figure out who really needs it and who doesn’t,” McConnell said.

One possibility for approving stimulus initiatives could be to attach measures that both sides agree on to a must-pass spending bill, said G. William Hoagland, senior vice president of the Bipartisan Policy Center. A stopgap spending bill approved in September only keeps the federal government funded through Dec. 11.

“One way or another, something will have to be done in the lame duck session just to keep the government operational,” Hoagland said.

A federal extension of unemployment benefits and funding for Covid-19 testing, tracing and vaccine distribution could all be likely measures for including in a government funding bill, he said. But

because funding for state and local governments remains a controversial topic in Congress, Hoagland said it seems unlikely to be tacked on to other legislation.

ROUTE FIFTY

by ANDREA NOBLE

NOVEMBER 4, 2020

[Divided Government May Push the Fed to Go Bigger. Here's What That Might Look Like.](#)

Gridlock in Washington doesn't seem to be going away, and a divided government probably won't be providing much more help to an economy still ailing from the coronavirus.

That's bad news for the growth outlook. After all, the economy is still about 5% smaller than it otherwise would have been, with roughly 11.6 million Americans still unemployed or underemployed compared with February. And while roughly 20 million Americans have returned to work since April, the recovery hasn't been enough to prevent millions of people being jobless for longer than 26 weeks. Moreover, many of those who have gotten rehired since April are nevertheless in a bad financial situation, given the low level of wages of the jobs that have been added and the depletion of household savings.

[Continue reading.](#)

Barron's

By Matthew C. Klein

Updated November 9, 2020

[States Go After Small Businesses on Amazon - and Sometimes Amazon - for Millions in Back Sales Taxes](#)

The Supreme Court in 2018 gave states the power to make new rules for collecting sales taxes online. But back taxes on products sold by small businesses on Amazon's marketplace are still a major point of dispute.

Amazon is one of the nation's largest retailers in part because of its rapidly growing online marketplace, which allows small business owners to sell their products to a vastly larger group of consumers. In fact, Amazon's marketplace sales more than doubled in just three years, climbing to about \$230 billion in 2019, accounting for more than half of the online giant's business.

But up until last year, many of those sales weren't taxed because the legal requirement to do so was murky. Now, some state governments are trying to recoup those taxes. But whether they're going after Amazon or small business owners themselves for that money depends upon the state.

In California, a state agency is trying to collect back taxes from Fulfilled-By-Amazon (FBA) sellers

from as far back as 2012, when Amazon first opened warehouses and fulfillment centers there.

Earlier this year, Philadelphia-based FBA seller Brian Freifelder received a notice from the California Department of Tax & Fee Administration (CDTFA) warning that he could owe California up to \$1.6 million in back sales tax, plus penalties and interest. (After the story made national news, the CDTFA admitted the \$1.6 million estimate was “higher than it should have been,” but did not let Freifelder off the hook.)

The CDTFA argues that a business owner’s inventory stored for sale in California amounts to having a physical presence there, and therefore triggered the eligibility for those sales to be taxed. The action by the agency has sparked at least two lawsuits, the most recent one filed in September by the trade organization Online Merchants Guild. The guild, which represents FBA sellers, says those sales taxes should have been collected by Amazon in the first place because Amazon was the retailer. In the marketplace format, it argues, merchants are the equivalent of suppliers because they don’t have control over where their products are shipped or sold.

“They [the CDTFA] have no more discretion to go after Amazon sellers than they do Black & Decker for their sales within Home Depot,” said Paul Rafelson, executive director of the guild.

But California isn’t alone in trying to directly collect from sellers, with Massachusetts, Minnesota, Washington and Wisconsin also sending demands for back taxes in recent years.

In South Carolina, however, the state is targeting Amazon itself. It sued the company for \$12.5 million in unpaid sales tax, interest, and penalties for the first quarter of 2016 alone. An administrative law judge sided with South Carolina, but that ruling is under appeal. The state says Amazon is liable for remitting sales tax for third-party marketplace sales because customers are using Amazon’s website and fulfillment services for the purchase.

Amazon said last year the ruling was without merit and hinted at the scale of the potential financial hit if other states followed this tack. “If South Carolina or other states were successfully to seek additional adjustments of a similar nature, we could be subject to significant additional tax liabilities.”

Most states sought to clarify the responsibility for collecting taxes after the landmark 2018 Supreme Court ruling that allowed states to collect sales taxes from online sellers, no matter where those merchants are located. In enacting their own sales tax laws, many governments made a distinction between businesses doing direct sales to in-state consumers and those done via online marketplaces such as Amazon or Ebay.

These marketplace facilitator laws, which have been passed in 33 of the 45 sales tax states, make clear that the marketplace platform is responsible for collecting sales taxes—not the merchant who is providing the product. The intent was to keep in place protections for small business owners for whom it may be cost prohibitive to comply with dozens of different sales tax laws. For example, California’s law that took effect in 2019 says that remote retailers must register to collect and remit sales tax once their annual sales into the state exceed \$500,000.

But far from clearing things up, those facilitator laws have in some cases added to the confusion. In California, State Treasurer Fiona Ma criticized the CDTFA’s approach, calling it “a wrong-headed and retroactive administration of the state’s tax law.” She argued in a letter to Gov. Gavin Newsom that the state’s policy was unfair to small businesses without the ability to comply, while possibly forcing them out of business. Since then, the legislature passed another law that limited the state’s look-back period to 2016 for collecting marketplace sales taxes, but that still targets sellers.

Scott Peterson, Avalara's vice president of U.S. tax policy, said that state legislatures can potentially step in to protect marketplace sellers from past tax liability. But in California, that ship has likely sailed.

"They could have let the past be the past," he said. "But instead they doubled down."

Route Fifty

By Liz Farmer

NOVEMBER 12, 2020

[Hawkins Advisory: Rev. Proc. 2020-44, Advance Guidance for Certain Transitions from IBORs](#)

The Treasury Department and the Internal Revenue Service have provided advance guidance in Rev. Proc. 2020-44 to allow the implementation of fallback regimes developed by the Alternative Reference Rate Committee and the International Swaps and Derivatives Association to facilitate the orderly transition away from interbank offered rates in certain contracts. This transition is expected to occur at the end of 2021 in accordance with the announcement made by the Financial Conduct Authority, which regulates and oversees the London Interbank Offered Rate. To the extent a contract is modified in accordance with such fallback regimes, under Rev. Proc. 2020-44 the modification will not result in a taxable event to either the investor or the issuer.

The attached Hawkins Advisory describes the provisions of Rev. Proc. 2020-44 as they apply to issuances of tax-exempt bonds.

[Read the Hawkins Advisory.](#)

[Here Are All The Coronavirus Relief Programs Expiring At The End Of The Year.](#)

As coronavirus cases surge across the country and new stay-at-home orders threaten further damage to an already fragile economic recovery, millions of Americans will lose crucial federal benefits if Congress can't come to agreement on a new round of stimulus legislation.

[Continue reading.](#)

Forbes

by Sarah Hansen

Nov 15, 2020

Results of 2020 State and Local Tax Ballot Measures.

[Read the Tax Analysts report.](#)

November 3, 2020

State Ballot Tax Initiative Outcome Mixed; Modest Revenue Effects - Fitch

Fitch Ratings-New York-11 November 2020: Taxes were on the ballot in a number of states in the 2020 election, and the outcome of these statewide ballot initiatives will have a modest effect on state budgets for the most part, Fitch Ratings says. Voters split in their support of taxes against a backdrop of weakening state revenues. Measures targeting narrow types of activity or those with specific funding purposes fared better.

Notably, Illinois voters rejected a graduated income tax, narrowing the state's fiscal options. This would have replaced the flat tax provided for in the state constitution and would have generated an estimated \$1.3 billion in state tax revenue in the second half of the current fiscal year. Budget cuts are likely, but the state may also raise revenues, such as choosing to increase the flat income tax rate. Borrowing is already included in the enacted budget, but additional debt without mitigating structural measures could compound pressures on Illinois' IDR of 'BBB-' with a Negative Rating Outlook.

California voters also rejected a constitutional amendment, Proposition 15, or the "split roll." Had it passed, California's Legislative Analyst's Office estimated it would have increased local property taxes by \$8 billion-\$12.5 billion per year statewide beginning in 2025, reducing cost pressure on the state to fund schools.

In Colorado, voters approved the reduction of the state income tax rate to 4.55% from 4.63%, which is expected to reduce state revenues by \$169.8 million in fiscal 2021-2022. Voters also chose to repeal the Gallagher Amendment, which currently limits residential property to no more than 45% of the total statewide property tax base by essentially reducing assessments when residential property values rise. The repeal will prevent an automatic residential property tax cut anticipated in fiscal 2022 and relieve the state from an estimated \$247 million fiscal offset to school districts. Voters also approved a new tax on nicotine vaping products and an increase in existing tobacco taxes, raising fiscal 2021-2022 revenue by an estimated \$175.6 million, the majority of which will initially go to K-12 education. Fitch maintains a 'AA'/Stable rating on the Colorado School Credit Enhancement Program, also known as the School District Intercept Program, or SDIP, and a 'AA-'/Stable rating on the Colorado Charter School Moral Obligation Program.

Arizona voters also supported a K-12 tax measure, approving an additional 3.5% tax on higher earners that will raise around \$827 million for schools and teacher salaries. Arkansas voters made permanent a roughly \$300 million 0.5% percent sales tax increase, first authorized in 2012, to fund transportation infrastructure. Oregon increased the cigarette tax by \$2.00 per pack and created a 65% tax on e-cigarettes, generating around \$160 million annually revenues for health initiatives and tobacco cessation efforts. The revenue will nominally alleviate pressures on the general fund's \$22 billion biennial budget.

Gaming initiatives passed in Maryland, Nebraska, South Dakota and most Louisiana parishes will have a marginal effect on tax revenue. Taxes on related activity such as entertainment, food, and

lodging may have secondary revenue benefits, although this is unlikely to materialize until the coronavirus is contained.

Recreational cannabis legalization passed in all states where it was on the ballot: Arizona, Montana, New Jersey and South Dakota. In addition, Mississippi approved medical marijuana. While this provides a new tax source for these states, in all cases Fitch anticipates modest effects on state budgets.

Other notable ballot initiatives, including Alaska's Measure 1 regarding fuel-production taxes, have not been called yet.

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

TAX - ALABAMA

[Ex parte Department of Revenue](#)

Supreme Court of Alabama - October 30, 2020 - So.3d - 2020 WL 6374805

Department of Revenue sought review of Tax Tribunal's judgment in favor of taxpayer, an electronic-bingo operator, in taxpayer's challenge to Department of Revenue's determination that it owed \$75,000,000 in sales taxes and consumer-use taxes for operator's electronic-bingo activities for a particular four-year period.

The Circuit Court denied Department's motion for recusal but did not provide any specific rationale or reasoning. Department petitioned for a writ of mandamus.

The Supreme Court held that:

- Department was entitled to the recusal of trial judge, but
- Department was not entitled to mandamus relief in regard to its request that the case be reassigned.

Department of Revenue was entitled to the recusal of trial judge in Department's appeal of Tax Tribunal's determination that Department's \$75,000,000 assessment of sales taxes and consumer-use taxes for business taxpayer's electronic-bingo activities for a particular four-year period was void; a reasonable person would question judge's impartiality in light of his recusal in earlier challenges to the tax assessments at issue as well as his recusals in other cases involving the same parties and the Supreme Court's removal of him in a case involving the same parties without the issue of recusal having been heard in the circuit court, and nothing in the record on Department's mandamus petition indicated that the reasons for recusal set forth in the previous cases did not remain.

Department of Revenue failed to demonstrate a clear, legal right to mandamus relief in regard its request that its appeal of Tax Tribunal's determination that Department's \$75,000,000 assessment of sales taxes and consumer-use taxes for business taxpayer's electronic-bingo activities for a particular four-year period be reassigned, even though Department was entitled to recusal of the trial judge; Supreme Court had set forth well-established procedures for a trial judge to request reassignment of a case once he or she recused himself or herself or was disqualified, and the materials before the Supreme Court indicated that the trial judge, when having recused himself in other cases, had followed those procedures.

[IRS Extends Period for Telephonic Public Hearings for Private Activity Bonds to September 2021: Holland & Knight](#)

Because of the continuing COVID-19 crisis, the IRS has issued [Revenue Procedure 2020-49](#) (the Revised Guidance), which extends the period during which remote telephonic hearings qualify as "public hearings" required for private activity bonds to Sept. 30, 2021. Originally, such telephonic hearings could not be held past Dec. 31, 2020.

The IRS previously released guidance in Revenue Procedure 2020-21 (the Prior Guidance), allowing remote telephonic hearings to qualify as "public hearings" required for private activity bonds under Section 147(f) of the Internal Revenue Code of 1986, as amended. (See Holland & Knight's previous alert, "[IRS Provides Procedures for Telephonic Public Approval Hearings for Private Activity Bonds](#)," May 5, 2020.)

To qualify, the hearing must be held by teleconference accessible to the residents of the approving governmental unit by calling a toll-free telephone number. That toll-free number and the procedures for calling in with comments should be published in the public notice for the hearing. In addition to this telephonic access, the approving governmental unit may also offer additional access to the hearing by other telephone numbers or by internet-based meeting technology.

The Revised Guidance applies only to hearings held telephonically - thus internet only or other non-telephonic hearings do not qualify.

The Revised Guidance applies to public hearings held from May 4, 2020, through Sept. 30, 2021.

Holland & Knight LLP

November 6, 2020

Pelosi Touts Possible Bipartisan Cooperation on Infrastructure After Election.

The House speaker also said she has no plans to stop pressing for a big coronavirus relief deal. Meanwhile, at least one top Senate Republican also indicated it's possible Democrat and GOP lawmakers could come together on a public works plan.

U.S. House Speaker Nancy Pelosi on Friday pointed to a large infrastructure package as an area where Democrats and Republicans might cooperate with Democrat Joe Biden in the White House, but Republicans maintaining control of the U.S. Senate.

Pelosi also rejected the idea of Democrats downsizing their ambitions for another round of coronavirus relief in order to strike a compromise with Republicans, and specifically emphasized the need for more federal financial assistance to state and local governments.

"No, it doesn't appeal to me at all," Pelosi replied when asked during a press conference about her openness to a scaled-down relief bill.

She noted that, since the pandemic began, there have been hundreds of thousands of jobs cut in the state and local public sector "because of the funds that have been used to address the virus and lost revenue."

Democrats have been pushing in recent weeks for a roughly \$2 trillion package. A bill they pushed through the House in October included upwards of \$400 billion for states and localities.

Biden won the presidency on Saturday, clinching the lead in key battleground states, and was close to winning when Pelosi spoke on Friday.

Exactly which party will control the Senate is still up in the air. Partisan control in the closely divided Senate looks like it likely will hinge on a pair of runoff elections in Georgia in January.

In the House, Democrats are expected to maintain their majority, despite losing seats.

At least one key Republican on Friday also raised the possibility of infrastructure legislation—Sen. Lindsey Graham, of South Carolina, who after his reelection this week noted that he is in line to chair the Senate Budget Committee if the GOP keeps control of the chamber.

With Republicans in charge, Graham warned, "the agenda coming out of the House is dead on arrival in the Senate." But he also said there's "plenty of space to find common ground on infrastructure."

"I think there's a lot of bipartisanship for roads and bridges and ports," Graham told reporters during a video call. "We need to redesign the Highway Trust Fund because there are less cars on the road using gasoline and the Highway Trust Fund is based on gas taxes."

Pelosi characterized House Democrats "Moving America Forward" proposal from earlier this year—a \$1.5 trillion package of bills—as a possible starting point for talks about infrastructure and said it was similar to plans that the Biden campaign has outlined.

"As we go forward with an infrastructure bill, that is usually not partisan," she said.

During his time in office, President Trump repeatedly expressed an interest in a large infrastructure package and discussed this possibility with Pelosi and other Democrats at times. But a deal has

proved elusive, with funding a key sticking point.

Pelosi blamed the president for a lack of leadership on the issue, saying that he talked up the idea of a sweeping public works plan only “until it came time to make the tough decisions about paying for it and the rest and then he stomped out of the room.”

Republican leaders in the Senate have generally been cool toward the idea of passing a massive new public works package during Trump’s tenure and never lined up behind a funding proposal.

The U.S. Chamber of Commerce this week highlighted infrastructure and another round of coronavirus stimulus as two of its top post-election priorities. The Chamber has backed the idea of a new federal infrastructure investment program previously.

Graham, who won reelection defeating Democratic challenger Jaime Harrison by about 10 percentage points, drew attention at the end of the week for aligning himself with Trump as the president made unfounded allegations about voter fraud.

But the South Carolina senator said Friday that he will be willing to look for ways to work with Biden on certain issues if the Democrat wins. Graham also said he wants to move ahead with another stimulus bill before January, prior to the next presidential term beginning.

“I’ve been in the camp of going big,” he said of the virus relief legislation. “We need a big package.” But he also acknowledged that some fellow Republicans don’t agree with him on this.

Republicans in recent months have been resistant to the idea of funneling large additional sums of federal aid to state and local governments as part of further coronavirus relief.

ROUTE FIFTY

by BILL LUCIA

NOVEMBER 6, 2020

[GAO Says Oversight of Opportunity Zones Could Improve.](#)

Congress should give Treasury the authority to collect data and report on the performance of Opportunity Zones, in collaboration with other agencies, so the program can be better evaluated for outcomes such as its effect on employment or housing in the zones, the Government Accountability Office said in a report released November 9.

[Read the GAO Report.](#)

[Top Questions to Ask Before Investing in an Opportunity Zone Fund.](#)

What are the biggest questions you should ask before investing in an Opportunity Zone fund?

With many investors facing a year-end deadline for rolling over their capital gains into an Opportunity Zone investment, know which questions to ask any fund manager before writing that

big check.

[Continue reading.](#)

opportunitydb.com

By Jimmy Atkinson

November 11, 2020

Transforming Municipal Water Performance.

Exploring the economic challenges of running a municipal water utility during a pandemic

Publicly owned and operated water utilities are increasingly running up against tight budgets, debt obligations, and other barriers to investment as user charges, municipal bonds and traditional financing tools fail to keep up with the level of need.

While governmental departments provide some financial support for municipal water infrastructure, most water investment is locally driven, and municipalities must prioritize their improvements based on a specific set of economic, political, and environmental factors—often easier said than done. A municipal utility's ability to generate revenue is far more limited than that of an investor-owned utility and many municipalities do not have the capacity to take on additional debt. From complying with new regulatory requirements to preparing for the next major storm, municipal utilities must carefully weigh local needs when launching new investments.

Utilities must overcome several financial hurdles to address aging pipes and water mains, as well as wastewater treatment and transport concerns, including rising operating costs and unpredictable revenues that can make it difficult to maintain self-sufficiency and make long-term capital plans. Meanwhile, many municipal utilities are dealing with a heavy debt burden, and are underfunded, with many not investing sufficiently in their networks to keep up with decaying infrastructure.

The gap continues to grow between water and wastewater capital needs and historical public and private capital investment. Meanwhile, regulatory pressures over water quality increase, and environmental burdens of severe storms or severe droughts become more frequent. All of these combine to intensify the challenges facing cash-strapped municipal utilities.

With these challenges providing the backdrop, the COVID-19 pandemic is now providing additional financial performance challenges for municipal water utilities. A recent report prepared for the American Water Works Association and the Association of Metropolitan Water Agencies estimated that the aggregate financial impact of COVID-19 on drinking water utilities in the U.S. alone will likely be approximately \$13.9 billion, which represents an overall 16.9% financial impact on this sector. These new pandemic-related financial impacts are the result of two unexpected impacts. First, increased costs due to operational challenges needed to handle social distancing and remote working. Second, utilities are anticipating reduced revenue due to lower non-residential water demand during lockdowns, due to some customers' inability to pay their bills, and also the no-disconnect policy followed by many utilities during the COVID-19 crisis.

Tackle Performance Challenges With Innovation

Pandemic challenges aside, many water utilities were already struggling, focusing on yesterday's work without the capacity to plan ahead. Few have proactive business models in place, and even fewer are able to invest for performance.

A few years ago, Global Water Intelligence (GWI) launched Leading Utilities of the World (LUOW), a global network of the world's most successful and innovative water and wastewater utilities. The goal of the group is to drive performance across the water sector by recognizing achievement and celebrating those successes while inspiring others in the industry. For example, LUOW member Dubai Electricity & Water Authority's AMI project helped the utility save 1.4 billion gallons of water in 40 months and increased revenue by \$13.7 million USD.

It is not just economics that separates the successful utilities from those struggling to keep up. The winning combination, as evidenced by LUOW members, is leadership and innovation. San Francisco Public Utilities Commission, faced with the multiple challenges of earthquakes, aging infrastructure and droughts, diversified its water resources through four different initiatives: conservation, groundwater, recycled water, and non-potable water. As a result of these initiatives, per capita consumption is now averaging only 40 gallons of water per day per person.

Other municipal utilities are facing these challenges through integrated water resource management (IWRM), which emphasizes collaboration and information sharing to bridge the gap between different public and private shareholders while improving financial and environmental outcomes.

In some areas, there are efforts being made to encourage "utility strengthening through consolidation." For example, California State Water Resources Control Board is encouraging "water partnerships" (local resource sharing, physical or managerial consolidation, or full regionalization) to benefit from economies of scale and to save meager resources that can then be spent on necessary improvements, funding reserves or paying down debts.

Further, municipalities and municipal associations often contract out water and wastewater services to private sector companies such as SUEZ, Veolia and Inframark. In these cases, these companies provide scalable solutions depending upon the need of the municipal utility through public-private partnerships and comprehensive asset management contracts. Through this type of contractual arrangement, municipalities can outsource the management and operation of their water and wastewater systems while retaining control, ownership of their assets, and rate-setting authority.

It is this same long-term planning and execution of innovative approaches to performance management that have positioned some municipal water utilities to weather the impacts of the COVID-19 pandemic better than others. While the impact of the pandemic will vary for individual water utilities depending upon its impact on their customers, with utilities heavily associated with C&I and institutional customers, high unemployment, or already stressed cities likely to take a greater financial hit, the water utility sector has had previous practice dealing with periods of stress due to droughts. In an American Water Works Association-sponsored webcast in mid-May focused on the financial impacts of the pandemic, Helen Cregger, Moody's vice president and senior credit officer of public finance, noted that such periods of stress have prompted utilities to build cash reserves and increase fixed charges, and these will help them ride out this unexpected storm.

Embrace Electric Utility Strategies to Improve Water Utility Performance

The COVID-19 crisis has utilities across the board looking at ways in which to conserve capital, and it is here that water utilities can look to the electric utility industry for inspiration. For a municipal water utility with economic challenges, the key first step is to focus on making more of what is on hand: by operating and maintaining existing assets by and taking a more analytical approach. This

can unlock new capacity to do new work. By better managing existing assets utilities can alleviate or postpone massive capital expenditures on new infrastructure.

As a second step, municipal water utilities can also embrace the asset and network management techniques being adopted by electric utilities.

Through network sensors, IoT, and real-time analysis of the data provided, water utilities can increase their understanding of their network assets. Adding sensors and other IoT devices will allow the utility to access first-hand information from the field, clarify asset health, and feed that data back into planning and maintenance systems faster, to better optimize asset performance and reduce incidences of failure.

Using a network management system and its modeling capabilities (as electric utilities have been doing for years) to create a water network model will provide the utility with a better understanding of flow and potential leakage areas within the system, allowing for better maintenance planning.

As a third step, municipal water utilities need to seriously consider moving their enterprise applications for asset, metering, and billing to the cloud, either alone or in tandem with other neighboring utilities in a resource-sharing, multi-tenant arrangement.

The cloud offers flexibility and modularity, providing a scalable, reliable, and agile platform for every utility's core business. It is a much quicker route to new features and functionality than on-premises implementations, allowing utilities to cut costs and remove the upgrade burden, allowing them to repurpose budgets and staff to focus on value creation.

WATER & WASTE DIGEST

BY KATE ROWLAND

NOV 11, 2020

[COVID-19 Recovery: WIFIA's Role](#)

As part of the nation's COVID-19 response, federal policymakers should consider expanding and repurposing existing federal financing programs like U.S. EPA's Water Infrastructure Finance and Innovation Act (WIFIA) Loan Program.

In many ways, the economic consequences of the COVID-19 pandemic are just beginning for state and local governments and public-sector infrastructure agencies. They will face the direct effects of the prolonged shutdown on revenues and expenditures while being responsible for economic and social recovery in their communities. These challenging conditions will likely persist for years.

Even for those governments and agencies in good long-term financial shape, financing assistance may be critical to help manage the massive budget dislocations caused by this unprecedented crisis. Such assistance is especially effective for infrastructure agencies to keep major projects from being delayed or canceled due to unexpectedly lower revenue expectations.

The federal government's role in the pandemic's economic recovery is well recognized. But plans for specific federal financing programs are far from finalized. Many in Congress are calling for the \$500 billion Municipal Liquidity Facility (established by the Federal Reserve in the CARES Act) to be

amended to offer cost-effective loans. This concept is included in several bills recently passed or proposed in the House, but full enactment is still a distant prospect in the current political environment. And even if new sources of federal credit were established, the design and implementation of large-scale lending programs is a major task. It can't be accomplished overnight.

[Continue reading.](#)

Water World

by John Ryan

Nov 11th, 2020

[SEC Commissioner Lee: SEC Must Address Systemic Financial Risk Posed by Climate Change - Cooley](#)

At last week's PLI annual securities regulation institute, SEC Commissioner Allison Lee gave the [keynote address](#), *Playing the Long Game: The Intersection of Climate Change Risk and Financial Regulation*. She began her remarks with the pandemic as metaphor: a global crisis that, before it struck, was "understood intellectually to be a serious risk," but not fully appreciated as something we really needed to worry about. Now, we have experience of a crisis, no longer viewed "antiseptically through our TVs or phones, but firsthand as it unfolds in our homes, families, schools, and workplaces—not to mention in our economy. Seemingly theoretical risks have become very real." Another dramatic risk that looms even larger with potential for more dire consequences is the topic of Lee's remarks: climate change. According to a 2018 study by scientists in the U.K. and the Netherlands, the "point of no return" for achieving the goal of two degrees Celsius by 2100 set by the Paris Accord may arrive as soon as 2035. To be sure, the lesson from the pandemic is "not to wait in the face of a known threat. We should not wait for climate change to make its way from scientific journals, economic models, and news coverage of climate events directly into our daily lives, and those of our children and theirs. We can come together now to focus on solutions." And while this is hardly Lee's first rodeo when it comes to advocating that the SEC mandate climate risk disclosure, it seems much more likely now, with the imminent change in the administration in D.C., that the SEC may actually take steps toward implementing a regulatory solution.

Acknowledging that the SEC does not make policy to address climate change, Lee highlights the role the SEC does play—protecting investors, facilitating capital formation and maintaining fair, orderly and efficient markets—and how they all intersect with climate change. At a high level, financial regulators, including the SEC, must understand and, "where appropriate, address systemic risks to our economy posed by climate change. To assess systemic risk, we need complete, accurate, and reliable information about those risks. That starts with public company disclosure and financial firm reporting, and extends into our oversight of various fiduciaries and others. Investors also need this information so they can protect their investments and drive capital toward meeting their goals of a sustainable economy."

According to Lee, there is a "growing consensus that climate change may present a systemic risk to financial markets," a view shared by, for example, the Task Force on Climate-Related Financial Disclosure (TCFD) (see [this PubCo post](#)), and the Market Risk Advisory Committee to the Commodity Futures Trading Commission (see [this PubCo post](#)), among others. (Lee views "systemic risk" as risk "characterized by the following features: (1) 'shock amplification' or the notion that a given shock to

the financial system may be magnified by certain forces and propagate widely throughout; (2) that propagation causes an impairment to all or major parts of the financial system; and (3) that impairment in turn causes spillover affects to the real economy.”) To the extent that asset prices fail to fully incorporate risks, systemic shock becomes more likely; there is clearly evidence, in her view, that climate risks have not been priced in, especially for “long-dated assets, utilities, commercial mortgage-backed securities, and potentially municipal bonds, among others.” In the event of major climate-related events, markets may discover these anomalies, leading to “abrupt and disruptive re-pricing.” For example, some have highlighted the “risks of extreme weather events to the creditworthiness of state and local issuers in the municipal bond market, risks of hurricane and flooding to the commercial real estate market, and risks of aging infrastructure in conjunction with hurricanes and wildfires to the electric utility sector.”

But these disruptions will not necessarily be cabined within those sectors; rather they can spread throughout the financial system in expected and unexpected ways. The Bank for International Settlements, she observes, has identified climate risk as a “green swan” event—“a colossal and potentially irreversible risk of staggering complexity.” Climate risk differs from the better-known “black swan” in the level of its complexity—“a new type of systemic risk that involves interacting, nonlinear, fundamentally unpredictable, environmental, social, economic and geopolitical dynamics, which are irreversibly transformed by the growing concentration of greenhouse gases in the atmosphere.”

These disruptive effects compound each other, potentially affecting non-climate related vulnerabilities, such as “historically high levels of corporate leverage, and the effects of the COVID-19 pandemic which has depleted household wealth and bank balance sheets, and created more debt. Climate related shocks could further magnify these vulnerabilities.” And these effects may well be irreversible. Because of the potential for a climate-induced “overall shock to the global economy with systemic implications,” it is “imperative for the SEC to focus on climate risk as systemic risk, and coordinate with domestic regulators through the Financial Stability Oversight Council, and with international regulators through the Financial Stability Board’s Standing Committee on Assessment of Vulnerabilities, to monitor and address this risk.”

The starting point, she maintains, must be a “clear-eyed analysis of accurate, reliable data,” and there has been an unprecedented demand by investors for climate-related and ESG-related disclosure. Beyond so-called “impact” investing, she observes, climate and other ESG risks and metrics have become significant, decision-making drivers in a variety of sustainable investment strategies, as well as in “traditional investment analyses designed to maximize risk-adjusted returns on investments of all types. They represent a core risk management strategy for portfolio construction....The bottom line is that businesses now actively compete for capital based on ESG performance, and that competition needs to be open, fair, and transparent.”

How do we get there? Through “uniform, consistent, and reliable disclosure.” Some disclosure has resulted from private ordering, but, as she has contended previously (see, e.g., [this PubCo post](#), [this PubCo post](#) and [this PubCo post](#)), “some level of regulatory involvement [is needed] to bring consensus, standardization, comparability, and reliability.”

To illustrate, Lee looks to the role of banks, both in financing fossil fuel industries and in the opportunity to finance a shift toward a lower carbon economy, considered by all accounts as “a heavy lift.” She advocates that the SEC work with “market participants toward a disclosure regime specifically tailored to ensure that financial institutions produce standardized, comparable, and reliable disclosure of their exposure to climate risks, including not just direct, but also indirect, greenhouse gas emissions associated with the financing they provide, referred to as Scope 3 emissions. There is a concentration of risk in the financial sector that is not readily ascertainable

except through Scope 3 emission disclosures.” With appropriate resources, the SEC should take on the challenge of implementing appropriate regulatory action as it relates to standardized disclosure requirements.

The SEC must also address climate risk in the context of oversight of funds and their advisers, credit rating agencies and accounting standards. Clear disclosure is also necessary, in Lee’s view, in connection with funds marketed as “green” or “sustainable.” What does the fund mean by these terms and is the fund implementing a strategy that is consistent with that disclosure? Standardized company ESG disclosure would help, she believes. In addition, she suggests that the SEC consider requiring advisers to maintain and implement policies and procedures governing their approach to ESG investment. She also advocates that the SEC encourage increased transparency at credit rating agencies regarding how climate and other ESG factors are weighted when incorporated into credit ratings.

Lee also asks whether the FASB should look at climate risk in the application of GAAP as the IASB has done in issuing guidance addressing how existing IFRS requirements interact with climate-related risks, and identifying how climate-related risks may need to be reflected in financial statements, including in connection with asset impairments, asset valuations and useful life, contingent liabilities and expected credit losses.

In conclusion, she again alludes to the pandemic as an example of what not to do, advocating that we not wait until the crisis is upon us to respond, but instead “move forward with considered, informed rule-making and other initiatives in this space.”

by Cydney Posner

November 10, 2020

Cooley LLP

[Climate Change Lawsuit Reaches the US Supreme Court.](#)

The US Supreme Court recently [granted certiorari](#) in an important climate change lawsuit, *BP P.L.C. v. Mayor and City Council of Baltimore*. The lawsuit pits the Mayor and City of Baltimore against twenty-six multinational oil and gas companies that Baltimore claims are responsible for climate change. Baltimore alleges that the companies contributed to climate change by producing, promoting, and (misleadingly) marketing fossil fuel products long after learning of the climate-related dangers associated with them. Specifically, Baltimore argues that the companies engaged in a “coordinated, multi-front effort” to conceal their collective knowledge of climate change. Also that the companies discredited the “growing body of publicly available scientific evidence,” and worked to “undermine public support for regulations of their business practices.” Baltimore seeks relief for “climate change-related injuries.”

[Continue Reading](#)

By Brent Owen on November 11, 2020

Squire Patton Boggs

Denver Supportive Housing Social Impact Bond Initiative: Housing Stability Payments.

Abstract

In February 2016, the City and County of Denver and eight private investors closed on the city's first social impact bond, an \$8.6 million investment to fund a supportive housing program for 250 of the city's most frequent users of the criminal justice system. The city will make outcome payments over five years based on the initiative's goals of housing stability and a decrease in days spent in jail by participants. This brief details the fourth assessment of housing stability payment outcomes and interim housing stability outcomes for the program.

[Read the study.](#)

The Urban Institute

by Sarah Gillespie, Devlin Hanson, Alyse D. Oneto, Patrick Spauster, Mary K. Cunningham, Mike Pergamit

November 13, 2020

San Francisco Sees \$116 Million Gap as Revenue Falls Short.

- **Higher than expected property taxes helped soften the blow**
- **Voter-approved taxes and changes added \$11 million to budget**

San Francisco's revenue is falling short of forecasts as the economy recovers more slowly from the coronavirus pandemic than the technology hub expected, creating a \$116 million budget shortfall just a few months into its fiscal year.

In a report issued Tuesday by city Controller Ben Rosenfield, revenue is forecast to be \$144 million less than expected in the adopted budget for the year that began in July, largely due to drops in business and hotel taxes. Still, higher than expected property tax collections are softening the blow and boosting reserves by \$21 million.

The city already raided reserves to help plug a \$1.5 billion deficit over the next two years due to the pandemic. Rosenfield's update comes a week after city voters approved new business taxes and changes, which will add a net \$11 million to the budget. Mayor London Breed in October had warned that failure of the measures could lead to service cuts. The budget for the fiscal year was enacted that month, later than usual to deal with the uncertainty amid the pandemic, and the city is already seeing changes to its forecast.

San Francisco's predicament is true for other local governments across the country dealing with the uncertainty of the outbreak and resulting shutdowns. Municipal officials are also hoping for a federal stimulus package, but Congress remains in gridlock. Chicago is planning to raise taxes and lay off workers to plug its record \$1.2 billion gap, and New York City is using \$4 billion in reserves, and warning it may have to lay off as many as 22,000 city workers if it doesn't get federal aid or state approval for borrowing to help close its \$9 billion shortfall.

“The level of uncertainty regarding city revenues and expenditures remains extraordinarily high, driven by the economic and financial impacts of the public health emergency,” Rosenfield wrote.

Indeed, the city on Tuesday said it will temporarily roll back the reopening of indoor dining and reduce the capacity of fitness center and theaters after a spike in Covid cases.

By tapping reserves, San Francisco, a city and county of about 880,000 residents, avoided layoffs but the Board of Supervisors approved scheduled raises for city workers against the wishes of the mayor, who called it irresponsible. The two-year general fund budget is about \$6 billion per year.

Rosenfield told the Board of Supervisors Tuesday that another concern is the availability of funds from the Federal Emergency Management Agency, which the city relies on for temporary housing for those at risk of contracting the coronavirus, such as those over age 65 or those who have qualified medical conditions.

The FEMA program, which is dependent upon the executive branch continuing it, can be cut off with 30 days’ notice, and is only authorized month to month. “So I don’t say that to scare anybody, but only to note that I think there is a significant risk that FEMA will fall away at some point,” Rosenfield said.

Rosenfield’s report assumes a vaccine will be available in spring 2021, and widespread adoption by December 2021. It expects a slower rebound in travel and tourism than previously forecast, not returning to pre-pandemic levels until the fiscal year that begins in July 2025.

Another key source of uncertainty is telecommuting, because even if offices can return to full capacity — which they currently aren’t — it’s unknown if managers will continue to allow employees to work from home as much as possible, according to the report. If remote work returned to its pre-pandemic levels, the city would get \$190 million more in business revenue. San Francisco expects to collect \$3.7 billion in total receipts, down from \$4.4 billion the previous year, according to the report.

Bloomberg Economics

By Romy Varghese

November 11, 2020, 6:00 AM PST Updated on November 11, 2020, 10:35 AM PST

— *With assistance by Joyce Cutler, and Henry Goldman*

[What You Need to Know for the Upcoming LIBOR Transition: Best Practices and Guidance - Ballard Spahr Podcast](#)

In this episode we’ll be discussing the upcoming transition from the use of LIBOR as the principal benchmark interest rate in lending transactions. We’ll look at the emerging alternatives, their implications and consequences, and the actions that should be considered by the many affected market participants to manage through the transition.

Our guest is Joyce Frost, Co-Founder and Partner at Riverside Risk Advisors LLC, an independent advisory firm with expertise in interest rate, currency, equity and structured credit derivatives. Within Riverside, she is also the Founder of LiborXchange, which helps clients navigate the LIBOR

transition, strategically and defensively. Leading this discussion is Joyce Gorman, Senior Counsel in the Firm's Washington, D.C. office and a member of the Firm's Finance Department.

[Listen to podcast.](#)

[View recording transcript.](#)

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November 11, 2020

[New Jersey Joins Hawaii in Pandemic Credit Downgrades, but Their Bonds Have Diverged.](#)

New Jersey just became the second state to get a credit-rating downgrade since the coronavirus pandemic struck, following Hawaii's downgrade earlier this year.

But New Jersey's bond yields have declined since then, even though rating downgrades typically drive bond prices lower and boost yields.

Last week New Jersey's 10-year general obligation bond—debt backed by a state's pledge to use its taxing power to repay, rather than a specific project or revenue stream—yielded 1.82%. At Tuesday's close, the bond yielded 1.77%, even though the state's credit was downgraded Friday to BBB+, three tiers above junk, by S&P Ratings.

In contrast, Hawaii's bond yields have climbed since its downgrade by Moody's in August. Its 10-year benchmark general-obligation bond yielded 1.1% on Tuesday, according to Bloomberg data, compared with 0.8% shortly before its downgrade.

Some of New Jersey's minor bond-price gains could be the result of the downgrade not being as severe as investors feared. But it could also be the result of optimism around the recent U.S. presidential election and a vaccine.

Yet Hawaii's finances—which are tied to the state's tourism industry—could be helped by a vaccine more than New Jersey's. Earlier this year, Hawaii said its tourism revenues aren't expected to get back to normal before 2024, according to Moody's. But it seems reasonable to think that an effective and widely distributed vaccine would move up that date.

New Jersey's problems, on the other hand, are more structural, as S&P Ratings pointed out in its Nov. 6 note downgrading the credit.

“Until the recent recession, New Jersey had been making progress on closing its...deficit,” the analysts wrote. “However, this progress depended on steady revenue growth during the long previous economic expansion. In recent years, most of the state's revenue growth has gone toward increasing New Jersey's annual pension contributions.”

And the possibility of a divided government could constrain the amount of federal aid New Jersey can obtain. That likely won't be determined until early January, when Georgia hosts two runoff elections.

In other words, if New Jersey's credit looks better after the election and vaccine, Hawaii's should look much better.

Barron's

By Alexandra Scaggs

Nov. 11, 2020 9:43 am ET

[MSRB Compliance Corner: Fall 2020](#)

[Read the Newsletter.](#)

MSRB Seeks Board of Directors Applicants.

Washington, DC - The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization established by Congress to safeguard the \$4 trillion municipal securities market, will solicit applications for four positions on its Board of Directors for the 2022 fiscal year. Selected candidates will be elected to four-year terms beginning October 1, 2021, where they will have the opportunity to oversee the organization's strategic initiatives to support an evolving market through effective regulation, modernized technology and big data.

"Our goal is to create a Board that is diverse, inclusive and reflective of the wide variety of perspectives that contribute to the field of public finance. To help encourage individuals to apply, we are soliciting applications earlier and keeping the application window open for longer than in prior years," said Board member Caroline Cruise. Cruise serves as chair of the Board's Nominating Committee, which is focused exclusively on the nominating process for new members now that the Board has split its Nominating and Governance Committee into two separate committees.

The Board is charged with setting regulatory policy, authorizing rulemaking, enhancing market transparency systems and overseeing operations for the organization. The Board is currently overseeing MSRB strategic initiatives that include modernizing the MSRB Rule Book to reduce compliance burdens; modernizing and enhancing the free Electronic Municipal Market Access (EMMA®) website and related market transparency systems; and delivering value to the municipal market through data. Board members are compensated for their service.

Board Composition

The FY 2022 Board will have 15 total members as the Board transitions to a smaller size. The reduced size of the Board is one of several significant governance enhancements developed during the Board's special review of governance in FY 2020, which also resulted in tightened standards of independence for public members and a lifetime service limit for Board members. [MSRB Rule A-3](#) outlines requirements for all applicants to the Board, including specific eligibility requirements to serve as a public or regulated Board member.

The Board will elect two public and two regulated representatives to join a Board that will consist of eight members who are representatives of the public, including investors, municipal entities and

other individuals not regulated by the MSRB and seven members from firms that are regulated by the MSRB, including representatives of broker-dealers, bank dealers and non-dealer municipal advisors. With respect to the two public member positions, the MSRB is particularly interested in individuals employed by state and local issuers. With respect to the two regulated member positions, the MSRB is required to select at least one municipal advisor who is not affiliated with a broker-dealer or bank dealer firm.

Qualified individuals representing the diversity of the country and a broad array of market perspectives and organizations are encouraged to apply for membership on the Board. All applicants must be knowledgeable of matters related to the municipal securities market.

Application Details

The application form will become available on the MSRB Board of Directors Application portal beginning December 1, 2020 and accepted through February 5, 2021. [Download a copy of the application form for reference.](#) Additional details on the Board application process are available on the MSRB's website [here](#). Questions regarding the application and selection process should be directed to Sara Ahmadzai, Senior Manager, Corporate Governance and Board Administration, at 202-838-1341 or sahmadzai@msrb.org.

Date: November 12, 2020

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

[Take an Active ETF Approach to Navigate the Municipal Bond Market.](#)

Fixed-income investors can consider an opportunity to access tax-exempt income while actively managing credit and duration exposures through a short duration municipal bond exchange traded fund strategy.

In the recent webcast, [No Time for Passive: The Case for Active Muni Bonds](#), Samantha Azzarello, Executive Director, Global Market Strategist; J.P. Morgan Asset Management, outlined the current markets we find ourselves in with both daily increases in coronavirus cases and fatalities. Meanwhile, the economy is still trying to recover its former glory prior to the Covid-19 pandemic, with 11.4 million regained employees on total nonfarm payrolls after the economy suffered a loss of 22.2 million. We see that the leisure and hospitality sector has been one of the worst hit areas, followed by transportation, utilities, education, health services, business services, and other services industries.

Looking ahead, Azzarello argued that we are still on a path to recovery as supportive monetary and fiscal policies help lift the economy. Consensus analyst estimates reveal a return to positive earnings growth ahead for the S&P 500.

Richard Taormina, Managing Director, Head of the Tax Aware Strategies Team, J.P. Morgan Asset Management, also highlighted the strong demand and record supply in the fixed-income market as more investors look to diversify their bond portfolios in a quickly changing environment. Taxable supply continues to be strong with issuance up 200% year-over-year. Tax-exempt issuance, though, is slightly lower than last year. Fund inflows have reversed the \$45 billion in outflows across the

March and April months and now show a positive \$20.2 billion year-to-date positive inflows.

Taormina noted that short rates will remain low as the yield-curve steepens ahead. The curve on 2 to 10 year bonds are at their steepest since 2018 after hovering near record lows earlier around March.

Meanwhile, Taormina argued that munis are still an attractive segment of the market for fixed-income investors when comparing the triple A-rated munis to U.S. Treasuries.

As a way to help better control their fixed-income duration exposure, investors can look to the actively managed JPMorgan Ultra-Short Municipal ETF (Cboe: JMST) to go down the yield curve and better manage risk. The JPMorgan Ultra-Short Municipal ETF tries to generate a high level of current income exempt from federal income tax as is consistent with the relative stability of principal. The portfolio primarily consists of investment-grade fixed, variable, and floating-rate municipal securities exempt from federal income taxes.

JMST comes with a 0.51% 30-day SEC yield or a 0.86% tax-equivalent 30-day SEC yield for those in the highest income bracket. The fund also has a 0.74 year effective duration and a 0.18% expense ratio.

The JPMorgan Ultra-Short Municipal ETF focuses on 0 to 1 year debt maturities, which make up about 74% of the portfolio. Compared to the benchmark Bloomberg Barclays 1-year Municipal Bond Index, it is slightly underweight to the top-rated muni debt securities since it holds a 16% position in non-rated debt, which may help the fund better generate yield opportunities. The ETF is also more heavily focused on local general obligation debt, hospital bonds, and housing-related bonds, as compared to the benchmark.

ETF TRENDS

by MAX CHEN on NOVEMBER 11, 2020

[NEWPF Webinar: Bringing Racial Equality into the Municipal Finance Industry](#)

Following our powerful session with CT Treasurer Shawn Wooden in September, NEWPF invites you to the first of its series on the promotion of racial justice in the Municipal Finance Community.

What reforms are needed?

How will they be measured to ensure meaningful results?

Date: Thursday, November 19, 2020

Time: 12:00 - 1:30 pm

Format: Zoom webinar

Join our distinguished panel for a thought-provoking discussion.

Panelists:

Gary Hall, Partner - Head of Investment Banking (Infrastructure & Public Finance), Siebert Williams

Shank & Co., LLC

Sean McCarthy, Managing Director and Chief Executive Officer, Build America Mutual

Paulette Brown, Partner, Locke Lord LLP, former President of the American Bar Association

Neene Jenkins, Executive Vice President, J.P. Morgan Chase

Moderator:

Ritta McLaughlin, Board Member, Association of Public Finance Professionals of District of Columbia, Maryland and Virginia

Use the link below to register for this webinar. You will receive a confirmation email from Zoom with your login information.

[CLICK HERE TO REGISTER FOR THE ZOOM WEBINAR](#)

[CSMA Reporter's Roundtable.](#)

Reporter's Roundtable - Thursday, Nov. 19 @ 1pm PST

Moderator: Marie Autphenne, Managing Director Municipal Credit, Raymond James

Panelists: Marisa Lagos, California Politics & Government Desk Reporter at KQED; John Myers, Sacramento Bureau Chief, Los Angeles Times

Marisa and John will join us for our annual Reporter's Roundtable; They'll discuss key takeaways from the CA November election results and other current topics.

You are invited to a Zoom webinar.

When: Nov 19, 2020 01:00 PM Pacific Time (US and Canada)

Topic: CSMA: Reporter's Roundtable

Register in advance for this webinar:

https://us02web.zoom.us/webinar/register/WN_acWY_aFHT8KKsWHWvUrFYg

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

Thanks and have a wonderful weekend!

Sincerely,

The CSMA Board

- [Ability to Address ESG Risk Will Increasingly Differentiate Credit Quality After Pandemic: Moody's](#)
- [In re: The Financial Oversight and Management Board for Puerto Rico – SIFMA Amicus Brief](#)
- [S&P U.S. State Ratings And Outlooks: Current List](#)
- [The COVID-19 Pandemic Continues On and So Do Telephonic TEFRA Hearings: Squire Patton Boggs](#)
- [Webpage Will Provide Updates on TE/GE Compliance Strategies.](#)
- [Higher Education: The Future is Not the Past - MAGNY Webinar](#)
- And finally, Much Ado About Sprinkles is brought to us this week by [Meiners v. St. Tammany Parish Fire Protection District No. 4](#), a bizarre tale in which a veteran fire captain lost his job due to his insistence that he was meeting with a ladies group at a Pinkberry yogurt shop when he was in fact having a thoroughly permissible lunch with his wife. The story features skullduggery and shenanigans such as surreptitious photos of the non-offending lunch, wiped cell phones and this bizarre sentence from the opinion, “The question of whether [fire captain] was actually at Pink Berry [sic] is a matter that is peculiarly within his knowledge.” (Seems peculiarly dismissive of the employees and patrons actually at Pinkberry during the period in question, no?) But, as they say, it’s not the crime, it’s the sticky bits you can’t get off your hands with those pathetic little napkins they hand out. Truly a legal maxim for the ages.

TELECOM - FEDERAL

[COMPTEL v. Federal Communications Commission](#)

United States Court of Appeals, District of Columbia Circuit - November 3, 2020 - F.3d - 2020 WL 6437312

Competitive local exchange carrier and California’s telecommunications regulator filed petitions for review of order of the Federal Communications Commission (FCC), which determined that incumbent local exchange carriers no longer dominated telecommunications market, and exercised its authority under the Telecommunications Act to forbear from enforcing wholesale pricing requirement and analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers.

Following consolidation of proceedings, incumbent carrier intervened in support of FCC.

The Court of Appeals holds that:

- FCC’s decision to forbear from enforcing wholesale pricing requirement was not arbitrary and capricious, and
- Findings and modes of analysis that were allegedly inconsistent with FCC’s past orders did not render its forbearance order arbitrary and capricious.

Federal Communication Commission’s (FCC) decision to forbear, under the Telecommunications Act, from enforcing wholesale pricing requirement it had previously imposed to foster competition in providing voice services for resale to customers was not arbitrary and capricious under the Administrative Procedure Act (APA), where it reasonably focused on national market for voice telecommunication services, rather than local markets separately, it found that copper wire advantage was of rapidly declining importance due to competing modes of voice transmission, and it found that incumbents’ possession of copper loops no longer gave them meaningful market power in national voice market, even though there were isolated geographic locations, especially rural areas, where competing modes were less robust.

Federal Communication Commission’s (FCC) decision to forbear, under the Telecommunications Act,

from enforcing analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers was not arbitrary and capricious under the Administrative Procedure Act (APA), although there were times when only copper loops, being self-powered, could conduct 9-1-1 calls when power went out, and FCC did not engage in detailed discussion about negative impact on public safety, where forbearance from unbundling requirement would not reduce availability of line-powered copper networks.

Findings and modes of analysis that were allegedly inconsistent with Federal Communication Commission's (FCC) past orders did not render arbitrary and capricious its order, pursuant to its authority under the Telecommunications Act, to forbear from enforcing wholesale pricing requirement and analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers, where FCC took different positions over last few decades because market for voice services and relevant technology had changed dramatically, it explained how market had evolved, and it reasonably concluded that intermodal competition was now sufficient to discipline prices.

EMINENT DOMAIN - GEORGIA

[Clay v. Douglasville-Douglas County Water and Sewer Authority](#)

Court of Appeals of Georgia - October 16, 2020 - S.E.2d - 2020 WL 6111205

Property owner brought action against county water and sewer authority (WSA), seeking damages for inverse condemnation, various costs, attorney fees, penalties, and other items.

The Superior Court granted defendant's motion to dismiss, and property owner appealed.

The Court of Appeals held that:

- WSA's denial of property owner's request for a variance from its stormwater regulations constituted an administrative determination;
- WSA was a local administrative agency; and
- Property owner was required to file an application for discretionary appeal from superior court's dismissal of his action against the WSA, disapproving *Brownlow v. City of Calhoun*, 198 Ga. App. 710, 402 S.E.2d 788.

County water and sewer authority's (WSA) denial of property owner's request for a variance from its stormwater regulations constituted an "administrative determination" for purposes of the Appellate Practice Act provision governing appeals from state and local administrative agencies; the WSA simply determined that based on the size of property owner's property and the specifics of his proposed construction plans that the applicable stormwater regulations barred him from proceeding without taking corrective measures and that the WSA was not authorized to grant a variance, and as such, the WSA's denial was based on the particulars of property owner's proposal and the decision pertained to his property alone.

County water and sewer authority (WSA) was a "local administrative agency" for purposes of the Appellate Practice Act provision governing appeals from state and local administrative agencies; the legislature established the WSA as a "public body corporate," and its powers included the power to contract with the city with respect to a water and sewage system, to include apportioning or designating the responsibility for any functions normally maintained by a water and sewerage system.

Property owner was required to file an application for discretionary appeal from superior court's dismissal of his action against county water and sewer authority (WSA), even though the action was couched as a claim for inverse condemnation; property owner challenged the WSA's decision by arguing its regulations should not have applied to his property because they had been superseded by federal and state statutory law, and property owner had been heard in two tribunals on the relevant issues, once by an administrative agency, and once by the superior court; disapproving *Brownlow v. City of Calhoun*, 198 Ga. App. 710, 402 S.E.2d 788.

EMPLOYMENT - LOUISIANA

[Meiners v. St. Tammany Parish Fire Protection District No. 4](#)

Supreme Court of Louisiana - October 20, 2020 - So.3d - 2020 WL 6146106 - 2020-0491 (La. 10/1/20)

Former assistant fire chief for parish fire protection district filed petition for judicial review of decision of the district's civil service board which affirmed his termination.

The District Court reversed and remanded. District sought supervisory review. The Court of Appeal denied writ. District filed application for supervisory writ, and certiorari was granted.

The Supreme Court held that district court exceeded its statutory authority in reversing civil service board's decision.

District court exceeded its authority, under statute governing court's review of decision of civil service board, in reversing decision of parish fire protection district's civil service board, which had upheld termination of assistant fire chief based on findings that assistant chief had made untruthful statements under oath, had improperly used his position to intimidate another officer, and had conducted factory reset of his district-issued cellphone, thereby destroying evidence; district court found sufficient evidence supported board's good faith in making two of the findings, but still remanded for further proceedings, and although district court did not impose different sanction in place of board's sanction, clear implication of court's judgment was that termination was excessive.

INVERSE CONDEMNATION - MISSISSIPPI

[Bay Point Properties, Inc. v. Mississippi Transportation Commission](#)

Supreme Court of Mississippi - October 29, 2020 - So.3d - 2020 WL 6334788

Landowner filed inverse condemnation proceedings against the Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property.

The Circuit Court entered judgment on jury verdict finding that the easement, for which MTC had paid \$50,000, continued to encumber the property, but that the use by MTC was not a highway purpose and awarding landowner the encumbered value of \$500.00 and no attorney fees. Landowner appealed. The Supreme Court, en banc, affirmed in part, reversed in part, and remanded for award of attorney fees. On remand, the Circuit Court awarded fees, but not in amount requested, and landowner appealed.

Trial court's decision, in making award of prevailing party attorney fees to landowner in inverse

condemnation action, to place greater weight on the results obtained and to award landowner only \$67,277.35 in attorney fees, costs and expenses, not the \$880,171.81 that it sought for obtaining an inverse condemnation award in nominal amount of \$500.00, was not unmistakable or indisputable error and could not be disturbed under a “manifest abuse of discretion” standard of review.

BALLOT INITIATIVE - TEXAS

[Pool v. City of Houston](#)

United States Court of Appeals, Fifth Circuit - October 23, 2020 - F.3d - 2020 WL 6253444

Professional petition circulators brought action challenging city charter provision, which permitted only registered voters who were city residents to circulate petitions for ballot initiatives and referenda.

The United States District Court for the Southern District of Texas sua sponte dismissed the action. Circulators appealed.

The Court of Appeals held that:

- Petition circulators alleged injury-in-fact sufficient to establish standing to challenge city charter provision, and
- Action was not rendered moot.

Professional petition circulators alleged injury-in-fact sufficient to support standing to bring action challenging city charter provision, which permitted only registered voters who were city residents to circulate petitions for ballot initiatives and referenda, as violative of their First Amendment free speech rights; circulators allegedly participated in circulation of numerous petitions in the past and intended to participate in such activity in the future, and there was reasonable threat of city’s future enforcement of charter provision, in light of city’s prior attempted enforcement and language on the city’s petition forms.

Professional petition circulators’ action challenging city charter provision, which permitted only registered voters who were city residents to circulate petitions for ballot initiatives and referenda, as violative of their First Amendment free speech rights was not rendered moot by city’s placement of “editor’s note” on its website indicating that city would accept petitions circulated by individuals who were not city residents and registered voters with a link to a revised petition form for nonresidents, where city council did not formally change the challenged provision or approve the nonresident petition form.

TAXPAYER STANDING - VIRGINIA

[McClary v. Jenkins](#)

Supreme Court of Virginia - October 22, 2020 - S.E.2d - 2020 WL 6192724

Taxpayers brought action for declaratory and injunctive relief against sheriff and county concerning sheriff’s cooperation agreement with the federal government concerning the enforcement of federal immigration laws.

The Circuit Court dismissed the suit, and taxpayers appealed.

The Supreme Court held that taxpayers lacked standing to challenge local governmental actions concerning enforcement of federal immigration laws.

Taxpayers seeking declaratory and injunctive relief against sheriff and county concerning the enforcement of federal immigration laws failed to allege specific local costs or expenditure as required to establish standing to challenge a governmental action; taxpayers' did not make any allegations regarding a certain dollar amount or specifics concerning the appropriation of local tax revenues.

POLITICAL SUBDIVISIONS - VIRGINIA

[Dumfries-Triangle Rescue Squad, Incorporated v. Board of County Supervisors of Prince William County](#)

Supreme Court of Virginia - October 22, 2020 - S.E.2d - 2020 WL 6192378

County board brought declaratory judgment action against provider of emergency medical services, seeking determination that board had authority to dissolve provider's corporate status.

The Circuit Court entered judgment in favor of board. Provider appealed.

The Supreme Court held that:

- Provider was not "established pursuant to" statute governing emergency medical services agency, and thus county board lacked authority under such statute to dissolve provider, and
- Such statute did not grant board power by implication to dissolve provider.

Entity which provided emergency medical services to county pursuant to contract was not "established pursuant to" statute governing emergency medical services agency, and thus county board lacked authority under such statute to dissolve entity, where entity existed well prior to enactment of statute, and after board severed its contractual relationship with entity, entity continued as private, nonstock corporation.

Statute allowing a county board to dissolve an emergency medical services agency "established pursuant to" such statute did not grant board, by implication, the power to dissolve an entity which was not established pursuant to statute but which provided emergency medical services pursuant to contract with county; plain language of statute was so strong as to preclude authority by necessary implication.

TAX - ALABAMA

[Jefferson County Board of Education v. City of Irondale](#)

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

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

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

The Supreme Court held that:

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

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

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

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

[The COVID-19 Pandemic Continues On and So Do Telephonic TEFRA Hearings: Squire Patton Boggs](#)

Remember earlier this year when the novelty of working from home hadn't worn off, when every day wasn't [Groundhog Day](#), when we hadn't run out of Netflix to watch, and when we were all concerned about how to satisfy the in-person TEFRA hearing requirement for tax-exempt private activity bonds in the midst of a pandemic and all sorts of Stay-at-Home orders? I know, that seems like decades ago!

As a refresher, on [Star Wars Day](#),^[1] the IRS responded to NABL's request for relief from the in-person TEFRA hearing requirement in the form of [Rev. Proc. 2020-21](#). Rev. Proc. 2020-21 permits telephonic TEFRA hearings during the period between May 4, 2020 and December 31, 2020. Specifically, during this period, a governmental unit can meet the TEFRA requirement that the public hearing be held in a convenient location by affording the general public access to the hearing by toll-free telephone call.^[2] It's clear that the IRS was also hoping that the COVID-19 pandemic would be all but a distant memory by the end of 2020.

Unfortunately, it looks like the COVID-19 pandemic is probably going to be with us beyond

December 31, 2020. So, yesterday, the IRS issued [Rev. Proc. 2020-49](#), which extends until **September 30, 2021** the period during which telephonic TEFRA hearings can be held in lieu of in-person TEFRA hearings. Hopefully, we won't be in quarantine until then.

Now back to your regularly scheduled stalking of election coverage.

[1] Or May 4, 2020 - you can choose how you want to recognize days in 2020.

[2] Never have the authors of this blog explained to so many people what a toll-free number is.

The Public Finance Tax Blog

By Taylor Klavan on November 5, 2020

Squire Patton Boggs

TAX - CONNECTICUT

[American Tax Funding, LLC v. Design Land Developers of Newtown, Inc.](#)

Appellate Court of Connecticut - October 20, 2020 - A.3d - 200 Conn.App. 837 - 2020 WL 6126558

Assignee of town municipal property tax liens against estate brought action against estate which sought the foreclosure of tax liens for one year of delinquent taxes and sought an in personam money judgment for two years of delinquent taxes.

The Superior Court granted assignee's motion for default for failure to plead, and assignee filed a motion for a default judgment regarding two counts seeking money judgment. Estate filed a motion to set aside the default and an answer. Thereafter, the Superior Court granted assignee's motion for default judgment. Estate appealed.

The Appellate Court held that:

- Estate's appeal of default judgment against it was moot because trial court lacked jurisdiction, and thus dismissal of appeal was required, and
- Mootness of appeal warranted vacatur of trial court's judgment.

Because estate was not a legal entity, default judgment against it and in favor of assignee of tax liens on estate property was a nullity, and thus, trial court lacked jurisdiction to render default judgment against estate and estate's appeal was moot and required dismissal; assignee's complaint named estate as defendant, summons listed the estate as the party served, service on the estate was executed by serving coexecutor of estate, complaint did not name any coexecutor in a representative capacity, nor did coexecutors names appear on any appellate materials in an individual capacity, all materials filed by estate were submitted under name of, or behalf of, estate, and appellate file was not replete with references to coexecutors, nor were they treated as real parties in interest.

Mootness of appeal due to trial court's entry of default judgment against estate, which was not a legal entity and lacked the capacity to be sued, warranted vacatur of trial court's order, where estate was not responsible for mootness of its appeal, and trial court's unreviewable judgment could

have had preclusive effects against estate in subsequent litigation.

[Ability to Address ESG Risk Will Increasingly Differentiate Credit Quality After Pandemic: Moody's](#)

[Read the Moody's Report.](#)

[In re: The Financial Oversight and Management Board for Puerto Rico - SIFMA Amicus Brief](#)

Amicus Issue:

Whether the security or property interest of bondholders and the monolines in excise tax revenues and toll revenues levied or collected by the Commonwealth specifically to repay the bond debt issued by the Commonwealth's independent instrumentalities does not attach until after those revenues are deposited with the fiscal agent.

Counsel of Record:

Faegre Drinker Biddle & Reath LLP

Laura E. Appleby
Kyle R. Hosmer

[Read the brief.](#)

[Tighter Municipal Budgets Shrink Retiree Health Benefits.](#)

Some city and state retirement programs swap in health stipends for medical plans or cut back benefits

America's retired workers are getting squeezed on their health care.

Cities and states can't afford to keep the same medical benefits they promised government retirees.

For all 50 states combined, revenue declines for 2020 and 2021 could reach 13% cumulatively, according to Moody's Analytics projections, while the average cost of an employer health-care plan for an individual increased 4% in 2020 to \$7,470, according to the Kaiser Family Foundation nonprofit.

"With Covid, revenue coming into governments is diminished, making it even more difficult for cities and states to fund retiree health care," said Marianne Steger, director of public sector and labor strategy for Willis Towers Watson, a multinational insurance brokerage and adviser.

The pandemic has crushed sales-tax income and tourism dollars, leaving local governments

struggling to find ways to cut costs.

Over the past decade, New Jersey, Michigan, Connecticut, Kentucky and Texas reduced benefits, tightened eligibility requirements or increased premiums and fees, according to the National Association of State Retirement Administrators.

While state governments have legal protections for their workers' pension plans, not all have protections for retiree health plans.

Most states rely on a pay-as-you-go basis for these benefits, said David Draine, senior officer of the public-sector retirement systems project for the Pew Charitable Trusts. This means money isn't set aside to pay for these benefits in the future.

"We are seeing a greater divergence into places who are trying to prefund these benefits and those who aren't," he said.

Only three states—Alaska, Arizona and Oregon—have funded ratios for retiree benefits above 75%, according to a study published by S&P Global in December 2019. There were 17 states as of December 2019 that haven't accumulated any assets to prefund benefits such as health care.

For those prospective retirees who have yet to qualify for Medicare, medical-benefit cuts can mean working longer hours for more years, or even picking up another job.

"It's causing guys to have to work longer into their 60s and 70s, which could further impact injuries and health," said Steve Teolis, 64 years old, a retired firefighter who lives in Canton, Ohio, and is a member of the Ohio Police and Fire Pension Fund.

"I was still able to retire, but I knew the consequences when I left, that I had to eventually pay for my own health care," Mr. Teolis said.

The Ohio Police and Fire Pension Fund sponsored a self-insured health-care plan for its retirees from 1975 to 2018, said fund spokesman David Graham.

"With no dedicated funding source for this plan, it eventually became unsustainable," Mr. Graham said in a written statement, adding that retirees would have had to increase their contributions to keep the health-care fund solvent.

When Mr. Teolis retired, he was eligible to receive health services through a broker who contracted the services for the fund. Because none of the hospitals or doctors near him were covered by the insurance, he decided to purchase a plan on the market.

Now the Ohio fund offers a health stipend in place of medical benefits.

The health plan "still costs me roughly \$1,000 out of my pocket a month, and the stipend pays for about half of that," Mr. Teolis said.

Health stipends are a less-expensive option for retirement funds. When people under 65 are able to choose their own health-insurance plans on the marketplace, the state sheds the risk and liability of large claims that might come with old age, Ms. Steger said.

Mr. Teolis said he is looking forward to when his Medicare benefits kick in next year, when he turns 65.

Medicare allows retirees 65 or older extra coverage for medical expenses if they already have a group health plan from a former employer.

Generally, Medicare pays for a retiree's health-care bills first, and the group health-care plan coverage pays second.

Some funds such as the State Teachers Retirement System of Ohio, or STRS, are comparatively well-positioned to continue paying health-care benefits to retirees.

The net amount for STRS's health-care fund reached \$3.9 billion in 2019, according to the fund's annual financial report, with a 182% funded ratio as of last month.

"What we had to do is look at what we could afford to offer and we had to rely on premiums and reimbursements, as well as our investment earnings," said Nick Treneff, spokesman for the fund that serves about 160,000 benefit recipients.

This means if all goes as planned in the years to come, the fund is projected to be able to fully pay these benefits to retirees.

"If the fund didn't offer health care, I would work longer than I planned to, and I would probably work until I was 65 and could qualify for Medicare, and that's a very old age for teachers," said Dale Price, a high-school math teacher for Toledo public schools and an STRS board member.

The Wall Street Journal

By Logan Moore

Nov. 7, 2020 5:30 am ET

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

[Read the Current List.](#)

[Webpage Will Provide Updates on TE/GE Compliance Strategies.](#)

The IRS Tax-Exempt and Government Entities Division is launching a new webpage to keep its stakeholders up to date on its compliance strategies during the fiscal year.

TE/GE officials announced the webpage November 5 during a briefing on the division's [fiscal 2021 program letter](#), which has been transformed from a static document to one designed to more accurately reflect evolving compliance strategies.

The new webpage is part of that approach, acting TE/GE Commissioner Edward Killen explained. It will be easily accessible through links on [irs.gov](#), and TE/GE will announce quarterly updates to the webpage for its communities and stakeholders, he said.

"As initiatives are closed and as we close compliance strategies, we will share the accomplishments and other relevant information that resulted from those efforts," Killen said. He added that the new

approach will increase flexibility and transparency and give taxpayers greater insight into TE/GE's activities, "which we feel will support voluntary compliance and stakeholder engagement."

Fiscal 2021 Priorities

TE/GE will continue working with other IRS divisions on syndicated conservation easements, abusive charitable remainder annuity trusts, and other trends, Killen said.

The division will also team up with the Large Business and International Division and the Research, Applied Analytics, and Statistics office to support compliance in the global high-wealth arena in areas of concern to TE/GE, especially regarding private foundations, retirement plans, and closely held businesses like employee stock ownership plans, Killen added.

TE/GE will continue to identify and pursue fraud and will use enhanced techniques to identify and develop civil and criminal fraud cases, including promoter investigation cases, when appropriate, according to the program letter. The division will also recommend criminal prosecution and civil penalties or injunctions against taxpayers or promoters who evade taxes.

According to acting TE/GE Deputy Commissioner Philip Lindenmuth, TE/GE will continue leveraging technology and data analytics to identify areas of noncompliance, detect emerging issues, and help the division allocate its resources for maximum effect and value. And for the first time, TE/GE will use robotic process automation to make processes more efficient and effective, he said.

The division will also be introducing a small-entity compliance initiative to address voluntary compliance challenges faced by small entities, Lindenmuth said.

Implementation of electronic filing of tax-exempt organization forms will continue as well. In fiscal 2021 TE/GE will work on e-filing for forms 990-T, 990-EZ, and 4720, Killen said.

TE/GE expects to launch an online interactive tax assistance tool in December to help taxpayers avoid making excess contributions to their 401(k) plans. There will also be an expansion of taxpayer digital communications, "which offers a secure exchange of messages and documents for taxpayers and their representatives," Killen said.

Erroneous Revocations

Killen also addressed the IRS's recent acknowledgment that it mistakenly revoked the tax-exempt status of thousands of nonprofits because of computer issues.

The revocations occurred after the IRS, responding to the COVID-19 pandemic, extended the calendar-year deadline for filing exempt organization information returns to July 15. Because of systemic limitations, the IRS couldn't update the deadline in the program that automatically issues revocation notices to organizations that have failed to file returns for three straight years. That caused some revocation notices to be issued prematurely.

Killen noted that the IRS immediately took steps to solve the problem, including by making sure that erroneously revoked entities are still listed as exempt and by communicating directly with affected taxpayers.

"Taxpayers should not be adversely impacted by this administrative error," Killen said.

TAX ANALYSTS

by FRED STOKELD

POSTED ON NOV. 6, 2020

[Tax Exempt & Government Entities FY 2021 Program Letter: NABL](#)

The Tax Exempt & Government Entities (TE/GE) FY [2021 Program Letter](#) has been released.

It captures priorities for new fiscal year. TE/GE will also use their new [Compliance Program and Priorities webpage](#) to provide information about additional priorities at the end of each quarter during the fiscal year.

FY 2021 compliance program and priorities align with the [IRS Strategic Goals](#):

- Strengthen Compliance Activities
- Improve Operational Efficiencies
- Maintain a Taxpayer-Focused Organization
- Ensure Awareness and Collective Understanding
- Leverage Technology and Data Analytics
- Develop Our Workforce

They will release a summary of FY 2020 accomplishments when all the data is available. You can also view the annual program and accomplishment letters for [previous years](#).

Jessica Giroux
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[Muni Bonds Falter on Prospect of Divided Government in Washington.](#)

Generous aid to state and local governments is less likely if Democrats fail to control both White House and Congress

The prospect of a divided government in Washington has been received rapturously in the stock market this week, but it hasn't made municipal-bond investors happy.

"It's probably one of the more negative outcomes for the asset class," said Mikhail Foux, head of municipal strategy at Barclays PLC.

Prices on bonds issued by states and local governments fell relative to Treasuries in the immediate aftermath of the election and then rebounded, but didn't receive the big bump many analysts had expected would follow in the event of a sweep by Democrats.

Yields on 10-year AAA, tax-exempt municipal bonds were 109.1% of 10-year Treasury rates Wednesday, up 2.4 percentage points from Tuesday, according to Municipal Market Data, reflecting an increase in investor concern about the risk of munis relative to U.S. government bonds. Yields fall

when prices rise.

The importance of the Senate to muni prices was made clear as the week wore on. By Friday yields had slipped to 99% of 10-year Treasury rates as results in Georgia pointed to potentially two runoffs that could hand the Senate majority to Democrats come January.

For muni-bond investors, a divided government diminishes the probability of two scenarios that would have likely driven a rush into the asset class.

A Democratic sweep could greatly increase the prospects for a large state and local-government aid package meant to solidify the finances of many of the municipalities that have been crushed by the impact of the coronavirus pandemic. In addition, a Democratic House and Senate could raise the likelihood of large income-tax increases that would make tax-exempt munis more desirable to investors.

Also weighing on munis was the possibility that the bonds of Illinois could be rated as junk after voters there rejected a plan for a statewide tax increase on affluent residents.

Analysts and investors said muni bonds tied to sectors most affected by the pandemic such as tourism and mass transit were most likely to be hit by election developments.

Over the past several months, coronavirus budget shortfalls have dragged down the trading price of some municipal bonds, and October data from Municipal Market Analytics show new defaults in the roughly \$4 trillion municipal market are at an eight-year high since the start of the pandemic.

Heading into this week, investors had said that muni bonds would rally if former Vice President Joe Biden defeated President Trump and the Democrats got clear victories in the House and Senate. Under that scenario, the White House and Congress might push for more aid to state and local governments or champion an infrastructure plan or income-tax increases.

But as of Friday morning, closer races and the reduced likelihood of Democratic control of Congress and the White House mean there are likely to be more limits on such moves. Senate Majority Leader Mitch McConnell has said he doesn't favor using federal-assistance money borrowed "from future generations" to fill in state budget gaps.

Moreover, should Republicans maintain control of the upper chamber of Congress, a state and local-government aid package that the Senate might support could drive up the supply of tax-exempt debt, pushing down prices, analysts said. That is because even fairly stable governments might rely more on borrowing to manage through coronavirus-induced shortfalls. About \$45 billion in local borrowing measures was on the ballot Tuesday, according to IHS Markit.

One source of new debt would remain limited under a divided Congress, however.

If Republicans stay in control of the Senate, Democrats are less likely to be able to end the ban added by Republicans in late 2017 on tax-exempt refinancing of municipal debt before the agreed-upon refinancing date. That would keep closed one longtime avenue for tax-exempt debt to enter the municipal market, helping to stabilize prices.

Before the ban, state and local governments could reap more savings from early refinancing as rates dropped. Hennepin County, Minn., for example, saved more than \$30 million in 2017 by refinancing debt used to help build Target Field, where the Minnesota Twins play.

Many in the market were surprised by an outcome of the Illinois election.

Yields rose by about a third of a percentage point Wednesday on 10-year Illinois general obligation bonds relative to AAA rates and remained at about that same level Thursday, according to Municipal Market Data, after Illinois voters rejected the ballot measure proposing to increase taxes on incomes over \$250,000.

A February poll of 1,000 Illinois registered voters by the Paul Simon Public Policy Institute at Southern Illinois University, Carbondale, found that they favored the tax by 2-1. During a state bond sale two weeks ago, investors agreed to prices significantly higher than where the state's debt was trading Wednesday, Thursday and Friday, according to Municipal Market Data and the Municipal Securities Rulemaking Board's Electronic Municipal Market Access platform.

The state tax plan would have brought in more than \$1 billion in yearly revenue, according to an estimate by Fitch Ratings. The refusal to approve the tax increases the chances that Illinois, currently rated one notch above speculative grade by multiple credit-rating firms, will become the only U.S. state in junk-bond territory.

"Unless there's a surprisingly large federal stimulus bill or state lawmakers very quickly come up with another solution to raise a lot of new revenue, Illinois is likely to suffer a downgrade from at least one of the rating agencies in the next several months," said Adam Stern, co-head of research at Breckinridge Capital Advisors.

Higher-grade bonds are expected to fare better and could even experience a longer-term bump as investors look to quality credits. The state of Florida, despite a tourism industry suffering from the pandemic, has benefited substantially from aid sent in the spring, said Ben Watkins, director of the Florida Division of Bond Finance.

"It's been a godsend," Mr. Watkins said. If cities and states don't get much more aid, the resulting market distress "will be much more isolated than a widespread problem," he added.

The Wall Street Journal

By Heather Gillers

Nov. 6, 2020 8:00 am ET

[Munis Rally Despite Election Suggesting 'Least Bullish' Outcome.](#)

- **Divided government promises less aid, obstacle to tax hikes**
- **UBS sees 'headwind' for credit quality of muni market**

After Tuesday's election, state and local government bonds staged their biggest rally in more than six months as traders wagered a divided federal government would spend less aggressively — a positive shift for investors worried about long-term inflation.

But municipal analysts say such an outcome, with Democrat Joe Biden in the White House and a Republican-led Senate, is less welcome to the \$3.9 trillion market than a clean Democratic sweep.

That's because a political gridlock would likely reduce the scope of the aid state and local governments will get to bridge budget gaps created by the coronavirus shutdowns. It would also reduce the odds of tax increases on the wealthiest Americans, which would make tax-exempt bonds

more alluring.

Analysts from UBS AG said Thursday that a divided government increases the credit risk on the bonds, since any aid package is likely to be “less generous.” Citigroup Inc. analysts led by Vikram Rai said ahead of the vote that a Biden presidency with GOP control of the Senate was the “least bullish” scenario for the municipal-securities market.

A party split between a Blue White House and a Red Senate would likely mean “legislation for future fiscal aid packages will not flow through easily and aid will be less generous,” Citigroup’s analysts said. “This would not bode well for municipal credit.”

The outcome of the election is still in flux, with ballots being counted in several key states and President Donald Trump pushing legal challenges intended to sway it in his favor. Georgia may also need to hold a second run-off election for one of its Senate seats, which could help tip the balance of power in that chamber to the Democrats.

Treasury yields edged up slightly Thursday. But those on municipal bonds, which are far less volatile, dropped for a second day, with 10-year yields falling 2 basis points to 0.82%. That follows a 9 basis point drop Wednesday, the biggest one-day decline since mid-April.

The results are crucial for states and cities that have been battered as the pandemic cut into two major sources of revenue — income- and sales-tax collections — while the coronavirus drove the economy into the deepest downturn since World War II. That’s left states and local governments facing combined shortfalls of \$450 billion through fiscal 2022, according to a September estimate by Moody’s Analytics.

Extending them federal aid was a key sticking point in negotiations over a new stimulus bill ahead of the election, with Trump mischaracterizing it as a bailout of states run by his Democratic foes. House Democrats included \$1 trillion of such aid in the bill they passed.

“Fiscal stimulus to state and local governments is now expected to be less generous than under a Blue Wave scenario,” wrote analysts at UBS’s wealth management arm in a note published Thursday. “This represents a headwind for municipal credit quality.”

Biden’s campaign has reiterated that state and local government aid would be central to his economic stimulus. Jared Bernstein, a senior economic adviser to the campaign, said such aid is a high “fiscal multiplier” and would help to build “a fiscal bridge to the other side of the crisis.”

Such aid would prevent the need for large budget cuts, tax increases or layoffs that would deal a further setback to the economic recovery. It could also prevent a surge of borrowing by some states to temporarily paper over their shortfalls, which could put pressure on their credit ratings.

Kentucky Senator Mitch McConnell said on Wednesday it’s a “possibility” that he would support more aid for states and cities.

Lyle Fitterer, co-head of municipal investments at Robert W Baird & Co Inc speculates that a state and local government stimulus would be around \$250 billion under a divided government.

“We would still argue that that’s plenty and that’s sufficient until we see what’s going to happen to the economy from a longer term perspective, so that gets them over the hump for the next year,” he said in an interview.

Bloomberg Markets

By Danielle Moran

November 5, 2020, 10:16 AM PST

— *With assistance by Shruti Singh, and Martin Z Braun*

[In Election Dispute, Citi Sees Munis Lagging in Flight to Safety.](#)

- **Market will go into 'risk-off mode' analogous to 2000 election**
- **Treasuries would likely gain, making munis look cheaper**

A disputed presidential election could set off a Treasury rally that would make state and local government bond prices look cheaper — at least in comparison.

Citigroup Inc.'s municipal strategists said they foresee a "somewhat high probability" that a clear victor won't quickly be known. If so, Treasury prices would likely rise as investors shift cash into the safest assets, widening the gap between yields on those securities and less volatile municipal bonds.

"We would expect a moderate Treasury rally as the market goes into risk-off mode as they await the adjudication of the election by SCOTUS," Citigroup Inc. muni strategists led by Vikram Rai wrote, using the acronym for the U.S. Supreme Court.

While polls show Democrat Joe Biden leading in the polls, President Donald Trump and Republicans are poised to mount legal challenges in battleground states where a flood of mail-in ballots will continue to be tallied after Election Day.

Yet traders and fund managers may not need to gird for extreme volatility: While Treasuries would gain as the election is sorted out, muni-bond prices would likely be little changed in light trading, Rai said in a phone interview.

"If they don't trade, the prints will remain stale and it will seem like the ratios are widening, it will seem like the spreads are widening," he said. "That's typical for what happens with all spread products whenever there's a risk-off rally."

Top-rated 10-year municipal bonds currently yield about 0.93%, or about 110% of comparable Treasury bonds, up from as little as 86% in August. That ratio — a key measure of relative value — signals that municipal bonds are growing cheaper when it rises and more pricey when it falls.

Treasuries rallied in the aftermath of the Gore versus Bush election of 2000, after a recount battle was ultimately decided by the Supreme Court. From Nov. 8, 2000 to December 12, 2000, when the Supreme Court ruled on the recount dispute, the 10-year U.S. Treasury rallied by about 0.52%, according to Citigroup. The 10-year was 5.87% on Nov. 8, 2000, so a comparable decline in percentage terms would be just 0.07 percentage point.

By contrast, if the election is decided without a dispute, Citigroup strategists expect bond markets will selloff moderately and stocks will rise "as investors breathe a sigh of relief at the thought of finally having this epic event behind us."

Bloomberg Markets

By Martin Z Braun

Wall Street Bets On Biden Win, GOP Senate, And Smaller Stimulus.

Wall Street is betting on Joe Biden winning the presidency, Republicans controlling Congress, and a divided government. As a result, there'll be a much smaller stimulus package in early 2021 and few, if any, tax hikes.

"Gridlock is the most likely outcome," Brian Gardner, chief policy analyst for Stifel & Co. in New York, told clients in a report, predicting that the GOP would retain control of the Senate.

"Progressives had their wings clipped" Gardner wrote. Bad feelings between leftist Democrats and conservative Republicans "will likely prevent widespread collaboration." He expects Congress, with the GOP in control of the upper chamber, will disappoint investors by spending less than the Democrats' promised \$2 billion to prop up the economy, though more highway spending is likely.

"The likelihood that the Senate will not flip to the Democrats gives comfort that major legislation is unlikely," James M. Meyer, chief investment officer at West Conshohocken-based Tower Bridge Advisors, which invests over \$1 billion, told clients in a note. "That leaves the economic reins in the hands of the Fed. Investors should like that."

Meyer added that, if the Senate remains Republican, "the stock market barely reacts to social unrest, crude political speech, wars, or climate change." It reacts, instead, to corporate profits and Federal Reserve interest rates. "No one can fault investors who want to see more of the same": cheap borrowing rates, modest but steady growth, and "hopefully, an end to the pandemic sometime in 2021."

In response, the Dow Jones Industrial Average jumped 367 points Wednesday to close trading at 27,847.

A divided Congress is unlikely to pass drug-pricing limits, so that's a good outcome for pharmaceutical companies, while a Biden presidency, even without full congressional support, could bring "a more rigorous and thoughtful approach to science," Geoffrey Porges, analyst at SVB Leerink, told investors in a note excerpted in Endpoints News, a drug industry newsletter.

The GOP majority "takes extreme scenarios off the table, including large tax hikes, major health care changes, and a huge stimulus package," said Jeff Mills, chief investment officer of Bryn Mawr Trust Wealth.

Biden has said he would only raise taxes on the wealthy, on those who make more than \$400,000 a year.

Strange as it sounds, divided governments often result in stock prices moving higher.

"Ultimately a gridlock scenario ends up being a good thing. We can start to focus on earnings, vs. handicapping major swings in policy," Mills said.

Key takeaways for investors under this scenario include a weaker U.S. dollar, compared with other currencies.

“We see pressure on the dollar under a Biden presidency, with a reversal of tariffs and trade policy,” Mills said. Tariffs tend to tamp down growth internationally, so scrapping the Trump-era tariffs would have the opposite effect.

“If tariffs are reversed, on a net basis, that’s better for growth in international markets, but has the opposite effect on the U.S. dollar,” he said.

Interest rates: With a smaller stimulus package, that means less possibility of inflation in the U.S. economy, Mills said.

“If we get a stimulus package, it won’t happen until Congress is sworn in Jan. 3, and then likely wouldn’t pass before February,” he said.

Less inflation means less likelihood of higher interest rates, so yields on Treasury bonds have dropped early today in trading.

Health care: This sector, which includes insurers, biotechnology, and pharmaceuticals, is “the biggest winner,” Mills said, since changes to the Affordable Care Act or a so-called “public option” would be off the table.

“That was weighing on this area of the market.”

Big Technology: Should the GOP continue to control the Senate, regulatory scrutiny of Big Tech will likely fade, which prompted share prices of Facebook (FB) and Amazon (AMZN) to rise in early trading.

Marijuana legalization: Voters in New Jersey, Arizona, Montana, and South Dakota legalized recreational marijuana, and now 1 in 3 Americans live in a state where adult pot use is legal.

The results sent a mild ripple through the marijuana sector. Shares of Canadian companies were down 7 to 9 percent. Canadian cannabis companies cannot own assets in the United States and they cannot sell Canadian grown marijuana in the U.S. So they had nothing to gain from the four states legalizing.

Stocks in the American-owned multistate operators — among which Cresco Labs and Green Thumb Industries are the largest — were flat to slightly up, according to analysts.

“On the whole, it was a wash,” said Pablo Zuanic, analyst for Cantor Fitzgerald

Pot sales tax revenue will help cash-strapped New Jersey and towns that allow and tax marijuana retailers, but it could take “two to three years” to start collecting even limited revenues, and by then neighboring states will have likely cut into New Jersey sales, Baye Larsen, vice president at Moody’s Investors Service, said in a report.

More drug-related initiatives were also passed, with Oregon becoming the first in the nation to decriminalize possession of “hard drugs,” while D.C. voters approved a measure decriminalizing “magic mushrooms” and other organic psychedelics. Denver, Oakland and Santa Cruz passed similar proposals.

Muni bonds: “As the economy improves and we get to a vaccine, we should see higher [interest] rates no matter who is finally elected President,” wrote David Kotok, municipal bond and fixed income investor with Cumberland Advisors. For now, however, interest rates remain low.

“Munis should be fine,” he wrote, although these bonds “will probably not get a tax-increase boost right away, from a demand/supply standpoint they are in very good shape.”

Until a second stimulus bill passes Congress, “we may see some additional actions from the Federal Reserve to shore up markets if needed. We also expect further jawboning from the Fed to Congress on the importance of additional stimulus.”

Tax moves: Hank Smith, head of investment strategy at Haverford Trust said if Biden wins, and the Senate remains Republican, there is “no shot of any major legislation, tax increases or state tax changes” including a wealth tax passing Congress, he noted.

“We won’t see anything crazy in the cabinet because everything has to be approved by the Senate. Elizabeth Warren will not become Treasury secretary. All Biden will be able to do is issue executive orders,” Smith said.

Philadelphia Inquirer

November 5, 2020

Staff writer Sam Wood contributed to this article.

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[Democratic Senators Call for Expansion of Fed Lending Programs.](#)

Four Democratic senators, including Minority Leader Chuck Schumer, urged the Federal Reserve and the U.S. Treasury to expand emergency lending programs for businesses and states and municipalities to provide support while Congress debates additional fiscal stimulus.

In a Nov. 5 letter to Fed Chair Jerome Powell and Treasury Secretary Steven Mnuchin obtained by Bloomberg, the senators asked that the programs be extended beyond their Dec. 31 deadlines, and that changes be made to make them more broadly available. In addition to Schumer, a senator from New York, the letter was signed by Mark Warner of Virginia, Sherrod Brown of Ohio and Elizabeth Warren of Massachusetts.

“Absent additional action, these facilities will fail to reach their full potential to support a robust economic recovery,” the senators wrote.

Both the Main Street Lending Facility, which is aimed at providing loans to small- and mid-size businesses and nonprofits, and the Municipal Liquidity Facility, for state and local governments of a certain size, have faced criticism for low participation. The Fed has argued that the muni facility has worked in that it provided a backstop for the market, which seized up in March but has functioned smoothly since then.

No Decision

Powell told a press conference Thursday that there had been no decision taken on whether to extend the facilities, which the Fed would do in coordination with the Treasury, while stressing that they had provided an important backstop during the coronavirus crisis.

“If things deteriorate, that would be the case where you’d want to maybe continue the facilities and

maybe change them and maybe have new ones," Powell said.

The Main Street program, which isn't seen as merely a backstop, has so far only lent out \$4.1 billion of a potential \$600 billion. Critics say that banks won't make loans to the companies that need it most right now, as they pose a higher risk. Without further stimulus from Congress on the immediate horizon, the Fed's emergency programs remain one of the few life lines in an economy that continues to struggle through a sputtering recovery.

The Fed has already made several changes to the Main Street program to widen the pool of potential borrowers. Last week it lowered the minimum loan amount to \$100,000 from \$250,000 and increased the fees banks stand to gain from participating in it. The senators propose further lowering the minimum to \$50,000, which would target small businesses who no longer have access to the shuttered Paycheck Protection Program, and further incentivize banks to lend through a more-attractive fee structure.

Muni Facility

Beyond extending the deadlines, the senators also ask for longer terms in the facility loans, beyond 3 years for the municipal program and 5 years for Main Street.

The Treasury Department said last month it opposes extending the \$500 billion municipal lending program beyond the end of 2020 or easing the costly terms that have left it virtually unused. But that could change should there be a change in administrations following this week's presidential election.

The senators also ask that the Fed and Treasury allow more localities to access the muni facility, which is limited by population size, and that they set up a program to buy muni bonds in the secondary market. The current facility buys bonds directly from the issuing entity, and some have argued that aid to the secondary market would be a better way to support local governments that have seen tax revenue plummet in the last few months.

They say that these changes would particularly help minority- and female-owned businesses, who tend to own smaller companies, and first responders, who also are also disproportionately female and Americans of color. They note that women and Americans of color have borne the brunt of the damage in the pandemic.

Bloomberg Business

By Catarina Saraiva

November 6, 2020, 8:54 AM PST

[Divided Government May Push the Fed to Go Bigger. Here's What That Might Look Like.](#)

Gridlock in Washington doesn't seem to be going away, and a divided government probably won't be providing much more help to an economy still ailing from the coronavirus.

That's bad news for the growth outlook. After all, the economy is still about 5% smaller than it otherwise would have been, with roughly 11.6 million Americans still unemployed or underemployed

compared with February. And while roughly 20 million Americans have returned to work since April, the recovery hasn't been enough to prevent millions of people being jobless for longer than 26 weeks. Moreover, many of those who have gotten rehired since April are nevertheless in a bad financial situation, given the low level of wages of the jobs that have been added and the depletion of household savings.

[Continue reading.](#)

Barron's

By Matthew C. Klein

Nov. 6, 2020 4:30 pm ET

8 Big Banks in Murky Waters, To Face U.S. Cities' Allegations.

Eight big banks in the United States are likely to be sued in a class action lawsuit filed by Philadelphia and Baltimore, per Reuters. Per U.S. District Judge Jesse Furman in Manhattan, the cities are permitted to move on with anti-trust claims against banks suing over their marketing of variable-rate demand obligations (VRDOs) from 2008 through 2016.

Allegations

Per the cities' allegations, eight banks, including affiliates of Bank of America BAC, Barclays Plc BCS, Citigroup C, Goldman Sachs GS, JPMorgan JPM, Morgan Stanley MS, Royal Bank of Canada RY and Wells Fargo WFC, have conspired and forced state and local governments for paying higher interest rates on a particular type of tax-exempt municipal bond — VRDOs.

Further, Philadelphia and Baltimore claimed that the colluded move reduced the available funds for hospitals, power and water supplies, schools, transportation and other essential municipal services.

With short-term interest rates, VRDOs are long-term bonds which are reset weekly. Moreover, early redemption is allowed for investors, while banks need to re-market these bonds at the lowest possible rates to other investors.

These banks have been alleged of sharing proprietary information related to bond inventories and colluded rate changes leading to deterred redemptions. Furthermore, banks succeeded to charge millions of dollars in remarketing and service fees for "effectively doing nothing" on this move.

Notably, Philadelphia and Baltimore issued \$1.67 billion and \$261 million of VRDOs, respectively.

In his decision, Furman said the cities offered "reason to believe that defendants stood to gain by participating in the rate-fixing scheme and that the scheme was possible only with defendants' coordinated efforts."

No comments have been received from the banks' spokespersons. Lawyers for the plaintiffs also had no immediate comment.

Conclusion

Amid the coronavirus pandemic-induced economic slowdown, which has dampened financials of all

sectors, banks have come under the purview of new allegations. A landmark judgment should be specifically put forward to terminate such collusions and shrewd practices in the future, bring justice to the sufferers, and punish the wrongdoers. While the settlement of the issues will put to rest investigations and bring reprieve to the banks, this comes as a huge blow to their financials.

Yahoo Finance

by Priti Dhanuka

November 3, 2020

[Judge Allows Cities' Class Action Over Bond Rate Conspiracy to Proceed.](#)

A federal judge has allowed to proceed a class action antitrust suit filed against eight banks for conspiracy to fix rates on tax-exempt municipal bonds.

On November 2 Judge Jesse M. Furman of the U.S. District Court for the Southern District of New York denied the banks' motions to dismiss in *City of Philadelphia v. Bank of America Corp.*

The class action complaint filed by the cities of Philadelphia and Baltimore alleges that the banks — Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, Barclays, Goldman Sachs, Morgan Stanley, and the Royal Bank of Canada — conspired not to compete against each other and to set, almost daily, artificially high interest rates on state and local municipal bonds between 2008 and 2016. The artificially high rates were estimated to be around 75 percent above what the plaintiffs would have otherwise paid, costing governments, schools, hospitals, and charities potentially billions of dollars, according to the complaint.

The alleged conspiracy surrounds the issuance of variable rate demand obligations (VRDOs), which are tax-exempt bonds with interest rates reset periodically, typically weekly. Bond issuers contract with banks as remarketing agents (RMAs) that are required to seek the lowest possible rates when selling bonds on behalf of the borrowers when the rates are reset or when an investor redeems a bond. If a rate is too high above the market, a bond issuer may find a new RMA to secure lower rates, and the bank loses a client. If the rate was set too low, bondholders would redeem their bonds and the RMAs would incur the costs of remarketing the bonds or holding them on their books.

The cities cite testimony from a former managing director at Citigroup, former senior RMA personnel at JPMorgan, and a former RMA at Wells Fargo who claim that communications between the banks happened regularly by telephone, in-person meetings, and Bloomberg messaging technology.

"A former senior RMA official at JPMorgan confirmed that it was a 'dirty little secret' that RMAs would talk to each other about rates and would ask other RMAs questions like, 'Are you placing this paper' — referring to a particular VRDO — 'and if so, what will be the rate?'," Furman wrote in his opinion.

The cities also cite statistical evidence supporting their argument. The issue was first raised by a whistleblower, which prompted an investigation and subpoenas from the SEC and the Department of Justice in 2015 and 2016.

The cities analyzed the bond interest rates between 2008 and 2016 and found that the rates set by

different banks clustered around each other during those years and diverged following the SEC and Justice Department subpoenas. The results of a regression model showed that the rates were nearly 75 percent higher than they would have been otherwise, according to the cities.

The class action suit states that there are thousands of members of the class throughout the country that were affected by the coordination between the banks.

The lawsuit was initially set in motion by Minneapolis-based municipal adviser Johan Rosenberg, who filed false claims act lawsuits in Illinois, Massachusetts, and California and was first identified by The Bond Buyer.

A pretrial conference is set for December 17.

In *City of Philadelphia v. Bank of America Corp.* (No. 19-01608), Philadelphia is represented by attorneys from Wollmuth Maher & Deutsch LLP; Quinn Emanuel Urquhart & Sullivan LLP; and Susman Godfrey LLP. Baltimore is represented by Susman Godfrey LLP. Bank of America Corp. and Merrill Lynch are represented by Wilmer Cutler Pickering Hale and Dorr LLP. Barclays Bank is represented by Skadden, Arps, Slate, Meagher & Flom LLP. Citigroup is represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP. Goldman Sachs is represented by Winston & Strawn LLP. JPMorgan Chase is represented by Covington & Burling LLP. The Royal Bank of Canada is represented by O'Melveny & Myers LLP. Wells Fargo is represented by Jones Day. BMO Financial Group is represented by Katten Muchin Rosenman LLP.

TAX ANALYSTS

BY AARON DAVIS

11/5/2020

[Emptied Sports Stadiums Tackle Losses With New Experiences.](#)

Drive-ins, weddings and dinosaur safaris help keep jobs—but can't compete with game-day revenues

Darryl Dunn, the chief executive and general manager of the Rose Bowl Operating Co., would have been preparing to receive the biggest crowd of his year around now, had this year been normal. The 90,000-plus college football fans that usually flock to the Rose Bowl's stadium in Pasadena, Calif., for the annual New Year's Day game will be watching the action at home this time, in accordance with California's social-distancing measures.

Mr. Dunn will instead be organizing the arrival of roughly 70 animatronic dinosaurs. The Rose Bowl's parking lot in January will be transformed into a "Jurassic Quest" safari. The parking lot has already served as an outdoor concert and comedy venue, and a haunted drive-through at Halloween.

The stadium is one of many large sports venues testing new visitor experiences as the coronavirus pandemic chokes revenue from ticket sales. The venues hope to take advantage of one asset they still have: large amounts of indoor and outdoor space.

"Our revenue is based on people, and if we don't have people, we don't make money," said Mr. Dunn. "But what we have got is space—so we said to ourselves, let's use that to try and make

lemonade out of this situation.”

The Rose Bowl’s foray into lockdown live experiences began in July, when a deal with the Tribeca Film Festival saw the stadium’s parking lot turned into a drive-in movie theater for 30 screenings across four weeks. Tickets cost \$30 per vehicle, and attendees could purchase food and beverages from outdoor concession stands. Each screening of 500 cars sold out, Mr. Dunn said.

The Tribeca series put the Rose Bowl on the drive-in map, Mr. Dunn said, and led to other deals with entertainment companies such as Netflix Inc. and Walt Disney Co.’s Hulu, which last month hosted an immersive “haunted drive-through forest” experience there as part of its “Huluween” horror movie screenings.

“We’ve literally transitioned our business to drive-in movies,” Mr. Dunn said. “That’s the business that we’re now marketing and selling.”

The Miami Dolphins have similarly found creative uses for their home stadium, which has reopened to spectators at a limited capacity of 13,000. Since June the National Football League team has turned the outside of Hard Rock Stadium into a makeshift theater. A 90-foot-wide screen, originally installed for the 2019 Miami Open tennis tournament, screened movies throughout the summer; attendees sat in tented pods dotted around the west and east lawns of the venue. The setup on Sept. 13 rebranded as the Gameday Theater and now shows home and away Dolphins games.

Meanwhile Gillette Stadium, best known as the home of the NFL’s New England Patriots in Foxborough, Mass., will later this month open a drive-through holiday lights display in its parking lots, allowing guests to navigate the 1.5 mile route in a car, bus or limo. The stadium in September also played host to Jurassic Quest, which “was such a huge success that two additional weeks were added to its original 10-day run to meet the demand for tickets,” a spokeswoman said.

Sports fans are longing to return to the stands, but health experts say stadiums are one of the highest-risk areas for coronavirus transmission. Dr. Peter Chin-Hong, an infectious disease specialist, walks us through how easily the virus could spread among the crowd. Photo: Associated Press (Originally Published May 17, 2020)

In the nation’s capital, soccer team D.C. United has been working with local fitness studios to host outdoor exercise classes on Audi Field. And the NFL’s Green Bay Packers last month turned home stadium Lambeau Field’s parking lot into a contact-free trick-or-treating zone for Halloween.

With no end in sight to social-distancing protocols, some stadiums plan to build dedicated venues that will let fans watch games and concerts at a social distance. The National Basketball Association’s Milwaukee Bucks earlier this year signed off on the construction of a multilevel “outdoor tailgating space” in the parking lot of their home arena, Fiserv Forum, which will let small groups of fans eat, drink and watch any action inside the arena from shipping-container pods and parking spaces overlooking new exterior screens.

The plans have been put on ice as the team awaits guidance from the municipal health department about permissible capacity, said Bucks and Fiserv Forum President Peter Feigin.

Nevertheless, Fiserv Forum from July to September held NBA Playoffs watch parties, turning the arena’s central court into a restaurant for groups of up to 10 people. Food and beverages were delivered to dining tables, a DJ provided pre-tip-off entertainment, and the games were streamed on the center hang screens. It was, Mr. Feigin said, “like the coolest basketball wedding you’ve ever been to.”

The success of the parties encouraged the Bucks' sales and marketing team to develop Fiserv Forum's fledgling hospitality offering, which—for now, at least—will be targeted at people looking for a space big enough to host socially-distanced parties, meetings and weddings of up to 100 people, Mr. Feigin said. Wisconsin limits public gatherings to no more than 25% of a room or building's total occupancy.

The Bucks hope such an alternative revenue stream will at least cushion decimated ticket sales and keep staff employed if the coming basketball season goes ahead without spectators, Mr. Feigin said. Still, stadium executives are clear these new experiences will not come close to covering the losses of 2020, no matter how successful they have been.

Hard Rock Stadium does "not make much money at all" from its Gameday Theater, but its operation does create jobs for local people, said Todd Boyan, the Dolphins' senior vice president of stadium operations. The Rose Bowl, which is owned by the city of Pasadena and operated as a nonprofit, will lose around \$13 million this year, Mr. Dunn said.

That is better than the estimated \$16 million loss it would have suffered without the drive-in theater and experiential events, but a far cry from its usual break-even forecast, he said.

"But this helps us keep jobs and it sends the right message to our community," Mr. Dunn said. "We're saying to the city: We're still open—we're just open a bit differently."

The Wall Street Journal

By Katie Deighton

Nov. 3, 2020 5:23 am ET

[Voters Back at Least \\$26.7 Billion of Municipal Borrowing Plans.](#)

- **Results still pending on about \$16 billion of proposed bonds**
- **About \$3 billion of bond measures on ballots rejected so far**

Americans approved at least \$26.7 billion in state and local borrowing measures, more than half of the proposed bond sales on ballots across the country, while another \$15.7 billion are still pending final results.

So far, only \$2.7 billion of bond measures, or about 6% of those proposed, had been defeated as of Thursday, according to a preliminary tally based on data compiled by IHS Markit and Bloomberg. Voters rejected a \$275 million measure in Amarillo, Texas that would have financed improvements to the civic center, and a \$155 million school bond in Wausau, Wisconsin, also failed.

U.S. voters weighed proposals to issue an estimated \$45 billion of bonds. That's the lowest in a presidential election since 2012, according to data compiled by IHS Markit. The uncertainty over the pandemic's impact on public finances prompted many municipalities to strike borrowing referendums from ballots. The results so far bode well for governments looking to improve schools, roads, bridges and hospitals.

Of the 10 largest bond measures on the ballot, six were approved, including a \$7 billion bond proposal for the Los Angeles Unified School District and about \$3.5 billion in borrowing for

improvements and construction for Dallas schools. A \$5.5 billion California bond offering for stem cell research was still pending results.

In California, which had the most proposed bonding on ballots across the country, voters approved about 75% of local revenue measures, including more than \$12 billion of school bonds, based on preliminary results.

Bloomberg Markets

By Nic Querolo

November 5, 2020, 1:23 PM PST

— With assistance by Joseph Mysak Jr

[Cracks Form in the Fragile Muni Bond Market.](#)

In the long run, fundamentals matter in all financial markets.

Stocks can be overvalued for a time. But eventually a price decline or a surge in earnings reverses that condition.

Bonds can also be overvalued or undervalued. In these markets, analysts focus on cash flows instead of earnings to determine value.

Just as in the stock market, cash flow is measured with inflows and outflows.

In the municipal (muni) bond market, inflows consist of tax revenues. Outflows are expenses for government services.

A security could be undervalued, for example, if a tax increase is about to be implemented, that will ensure a state can repay its debt. If revenues decline suddenly, the bond could be overvalued.

Over the next few years, inflows for states should fall. The chart below shows that revenue is expected to drop by more than 11% in 2021.

[Continue reading.](#)

moneyandmarkets.com

Posted by Michael Carr | Nov 6, 2020

[EMMA Advanced Search Features.](#)

The EMMA website's advanced search may feature more options than you know. Filters include bond insurance status, credit rating by rating agency, sector and more.

[Explore advanced search.](#)

Illinois Faces Risk of Junk After Voters Reject Tax on Rich.

- **Pritzker warns of 'painful' spending cuts after measure fails**
- **Citadel's Griffin wins in battle of billionaires over tax**

Illinois voters defeated a measure that would have allowed the state to raise taxes on its wealthiest residents, striking down a pillar of Governor J.B. Pritzker's plan for shoring up the state's finances and preventing its debt from being cut to junk.

The failure of the constitutional amendment that would have scrapped the flat income tax by a vote of 55% against sent the prices of Illinois's bonds tumbling, with those due in 2034 down about 7%. The costly campaign ended in a win for Citadel founder Ken Griffin who spent nearly \$54 million to fund the opposition, while Pritzker, the billionaire heir to the Hyatt hotel empire, gave \$58 million in support.

"The citizens of Illinois have delivered a clear message to our political leaders in Springfield," Griffin, the billionaire head of the Chicago-based hedge fund, said in an emailed statement on Wednesday. "Now is the time to enact long overdue reforms to save our state from fiscal ruin."

The loss adds a new challenge to the Democratic governor's effort to steady the finances of Illinois, whose rising pension-fund costs and chronic budget shortfalls left it with the lowest bond rating among U.S. states even before the pandemic struck. Failure of the measure won't automatically trigger a downgrade to junk. The three major rating companies, which all consider Illinois the lowest level of investment grade, said they'll be watching for the state's backup plan.

"There will be cuts and they will be painful," Pritzker said during a press conference on Wednesday. Without the additional revenue from the graduated income tax, the state will look at various options including cuts potentially for public safety, education and health services and may have to rely on its "regressive" tax system for more revenue, he said.

Downgrade Risk

If approved, the state would have been able to proceed with enacted legislation to apply higher rates to incomes over \$250,000, raising levies on the highest earners. Rejection by voters means the "risk of a downgrade would increase" unless the state eventually increases the flat tax, Barclays Plc said in a report Wednesday.

"The amendment's failure makes greater reliance on deficit financing more probable and is therefore credit negative, but the state's likely pursuit of other recurring fiscal strategies mitigates this impact," Moody's Investors Service analysts led by Ted Hampton, said in a report on Wednesday. The likelihood of "credit-negative strategies" like deferring near-term pension contributions may also rise, Moody's said.

Even with the graduated income tax failure, Illinois has other options available, Carol Spain, S&P's director of U.S. public finance, said in an emailed statement. Illinois will need to look at other budget-balancing steps, Eric Kim, head of state government ratings for Fitch, said in an emailed statement.

Alternatives for Illinois include more borrowing, tapping the Federal Reserve's Municipal Liquidity Facility for a second time, cutting spending or raising revenue with sales taxes and a higher flat income tax rate, Kim said.

'Budget Crisis'

Previously, Pritzker has said budget cuts of 15% over two years or potentially borrowing from the Fed again are possible if the amendment failed and no more federal aid comes through.

"While the fair tax would have helped to address our budget crisis with the least damage to the working families of Illinois, the millionaires and billionaires opposed it to protect their own wallets, deceiving the public about its purpose and they ended up prevailing," Pritzker said Wednesday. "Sometimes politics works against the best solutions."

The business closures due to Covid-19 since March have added to the fiscal challenges and all three major rating companies have a negative outlook on Illinois, signaling that it could be the first state stripped of its investment grade rank. Such a step would likely add to its financial problems by saddling the government with higher interest bills and preventing many mutual funds from owning its debt.

Pritzker said Wednesday he considers the state's investment grade rating "very important" and will continue to work to fix the state's structural financial problems to avoid it going lower.

"In this election, Illinois voters sent a resounding message that with an \$8 billion deficit and two massive tax hikes in the last ten years, we cannot trust Springfield Politicians with another tax hike," the Coalition to Stop the Proposed Tax Hike Amendment, said in an emailed statement late Tuesday.

"We are undoubtedly disappointed with this result but are proud of the millions of Illinoisans who cast their ballots in support of tax fairness in this election," Quentin Fulks, chairman of the Vote Yes For Fairness campaign, which supported the measure, said in an emailed statement on Wednesday.

"Now lawmakers must address a multi-billion dollar budget gap without the ability to ask the wealthy to pay their fair share," Fulks said. "Fair Tax opponents must answer for whatever comes next."

If enacted, the new graduated rates would have brought in \$1.2 billion for fiscal 2021, which began July 1, and \$3.1 billion for a full year, according to state estimates.

Red Ink

It was no panacea. Illinois has about \$8.3 billion of unpaid bills, some \$137 billion of unfunded pension liabilities, and its rainy day fund has just \$68,459. With the bond market demanding high penalties to own its debt, it's one of just two that have borrowed from the emergency lending facility the Federal Reserve rolled out after the pandemic.

"Illinois — it's not a stretch to say — it was a net loser in the preliminary aftermath of the election," said Ty Schoback, senior analyst for Columbia Threadneedle Investments, which owns Illinois debt as part of its \$17 billion in muni assets under management. He cited the lack of expected Blue Wave and the graduated tax failure.

The state has budget flexibility and sufficient liquidity for now, he said, adding that market participants will look for willingness to fix problems with structural changes that may be unpopular rather than only borrowing more or one-time tactics.

"I don't think the rating agencies have an itchy trigger finger and I think they are going to give the state a little bit of time," Schoback said. "All that being said, the state is definitely on the clock with rating agencies and investors."

Bloomberg Markets

By Shruti Singh

November 4, 2020, 8:56 AM PST Updated on November 4, 2020, 2:48 PM PST

[Illinois Isn't a Junk-Rated Credit. It's Just Trading That Way After Voters Rejected a Progressive Tax.](#)

Illinois' bond prices fell after voters rejected a graduated income tax proposal on Tuesday's ballot. And while its debt hasn't been downgraded, it is already trading like junk.

Several years after its budget-setting process was frozen by political gridlock, the state has been taking steps to increase revenue and reduce its reliance on bond markets—partly because its bonds are rated BBB-, just one tier above junk.

The state's constitution mandates a flat tax, and overturning that policy would have required 60% of people voting on the amendment to approve it, or more than 50% of all voters casting ballots, according to Moody's.

Instead, about 55% of voters rejected the measure, according to the Associated Press. A graduated income tax would have brought in an estimated \$1.3 billion this year, according to Fitch.

It is also looking less likely that states (or other stressed local governments) will receive substantial amounts of aid from Congress this year, as strategists say there is a higher probability of a divided government in Washington.

So Illinois' bonds have sold off. Yields of bonds maturing in five years have climbed roughly half of a percentage point since last Friday, to 3.5%, according to Bloomberg data.

The selloff has been even sharper over the past seven days, and the yields of six- and seven-year bonds have increased most on the news—the benchmark yields on Illinois' six-year bonds have climbed to 3.8% from 3% since last week.

S&P, Moody's, and Fitch all assign Illinois their lowest investment-grade rating, the equivalent of BBB-. But their current yields are closer to junk-rated municipal bonds, rather than investment-grade debt, according to Bloomberg data.

The Bloomberg Barclays High-Yield GO Index has a yield of 3.8% with a maturity of 5.4 years. The index of BBB-rated municipal bonds yields 2.6%, with roughly the same maturity.

To put it in simpler terms: The fact that Illinois' five- and six-year bond yields are trading around 3.5% and 3.8% shows that investors think the state's credit is closer to junk-rated municipals than its investment-grade peers.

“Now this is where it gets interesting, to see if the rating agencies actually have the chutzpah to pull the trigger on the first ever U.S. state junk rating,” wrote Eric Kazatsky, analyst with Bloomberg Intelligence, in a Wednesday note.

To be sure, Illinois still has options to raise revenue that it can pursue during coming legislative

sessions, according to a Wednesday note from Moody's.

If the state raises its flat income tax by 0.7 percentage points to roughly 5.7%, it could bring in about \$3 billion of additional revenue, says Moody's, the same amount that it had projected it would raise under a proposed graduated income tax.

Gov. J.B. Pritzker has also asked state agencies to identify potential spending cuts: 5% for the current fiscal year and 10% for the coming fiscal year.

But to free up \$3 billion, "the state would have to impose across-the-board reductions of almost 11%, based on actual 2019 figures," Moody's wrote. "This degree of austerity would have significant implications for delivery of core education, healthcare, corrections and other services."

It can also tap the Federal Reserve's Municipal Liquidity Facility again, says Fitch. If the state does end up getting downgraded by ratings firms, however, it will need to pay higher interest rates to use the facility.

As the state weighs its options, "Illinois' upcoming post-election legislative session could be particularly consequential this fiscal year," wrote Eric Kim, head of state government ratings at Fitch, in a Wednesday note.

Barron's

By Alexandra Scaggs

Nov. 5, 2020 9:15 am ET

[Municipal Bond Market Update - November Edition](#)

Investors are closely watching U.S. election results as expectations for a clear outcome dwindle.

As votes continue to be counted, investors are paying close attention to states such as Michigan, Pennsylvania, and Wisconsin. Market participants fear a contested election due to the potential for increased volatility amid concerns of a drawn-out count. The election has shifted attention toward mail-in ballots and final tallies, away from the groundbreaking quarter of economic growth reported last week.

On October 29, the Bureau of Economic Analysis (BEA) released U.S. GDP for the third quarter of 2020. The BEA estimates that real GDP accelerated at a record 33.1 percent annualized rate as the economy recoups lost ground from the first half of the year. The historic recovery reflects "continued efforts to reopen businesses and resume activities that were postponed or restricted due to COVID-19" the commerce department reported.

Despite the U.S. economy's blockbuster rebound, election uncertainty and further stimulus bill delays led to a spooky October for investors as broad-based equity and fixed income markets ended the month lower.

Muni Market Performance

Municipals were not exempt from the month's frightening performance as the broad market,

measured by the Bloomberg Barclays Municipal Bond Index, concluded the month 0.30% lower. Despite tax-exempt's lackluster month, the asset class outperformed taxable bonds with Treasuries ending the month 0.94% lower and the Bloomberg US Gov/Credit Index finishing 0.60% lower.

The AAA municipal benchmark yield curve continued its steepening trajectory, with yields in the two-year range concluding the month 4.8 basis points (bps) higher while ten and thirty-year yields ended 8.2 and 9.7 bps higher, respectively. As evidenced by the steepening yield curve, longer dated muni bonds (22+ years to maturity) lagged shorter dated peers for the month, producing a total return of negative 0.43%. Municipals with maturities in the one to five-year range led performance for the month, returning 0.15%, while intermediate term munis in the five to ten-year range ended 0.26% lower.

October marks six-straight months of high-yield (below investment grade) muni outperformance. The lower quality asset class ended the month in positive territory with a total return of 0.18%, according to the Bloomberg Barclays Muni High Yield Index. Despite the streak of positive relative performance, lower quality paper remains behind year-to-date, struggling to recoup losses from March's drawdown. Through the October month end, the Bloomberg Barclays Municipal Bond Index has returned 3.02% for the year whereas the Bloomberg Barclays High Yield Municipal Bond Index has returned 0.54%.

Supply & Demand Situation

Municipal issuance saw a record setting month as issuers seek to capitalize on historically low interest rates. October's almost \$70 billion in new issue deals came to market against the backdrop of political uncertainty as municipalities rushed ahead of the election. Year-to-date supply was 26.6 percent higher than the same time last year, amounting to a total volume of nearly \$415 billion. Tax-exempt municipals continue to trade favorably despite the heightened political discourse. The two-year muni-to-Treasury ratio, which represents muni yields relative to Treasuries, ended October at 129 percent while the ten- and thirty-year ratios both ended the month at 107 percent.

As final tallies are counted in the U.S., municipal bonds may continue to see volatility as investors search for clarity around potential income tax changes and additional stimulus measures.

municipalbonds.com

by Corey Boller

Nov 04, 2020

[The Surprising Durability of OZ Multifamily in a Pandemic, with Pete LaMassa.](#)

What are the biggest questions on the minds of Opportunity Zone investors? And what have been some of the most surprising real estate market outcomes from the coronavirus pandemic?

Pete LaMassa is Opportunity Zone deal captain and managing director at Bridge Investment Group, a vertically integrated real estate private equity firm with a \$1 billion Opportunity Zone strategy.

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

[Continue reading.](#)

opportunitydb.com

By Jimmy Atkinson

November 4, 2020

Higher Education: The Future is Not the Past

Date: Friday, November 20, 2020

Time: 12:00 - 1:30 pm

Location: Zoom Webinar

Details:

The coronavirus pandemic has increased near-term risks for higher education institutions. Over the next two years, colleges will confront declining revenues and expense pressures, which will force difficult decisions around personnel and programs. In addition to budget strains, colleges will focus on bolstering liquidity and managing debt. Prospects for additional federal relief remain uncertain.

Over the longer term, shifting demographics, technological innovation, consumer preferences, and governmental funding/policies will influence the pace of change for the sector. What will the higher education landscape look like in the future? How will liberal arts colleges adapt? Will the role of public universities change? What are the opportunities and constraints for the sector, and how will these impact credit quality?

Our panelists will provide a broad perspective on all of these issues from several points of view.

Our Speakers:

Dr. Sean Decatur, President - Kenyon College

Dr. Decatur is an award-winning biophysical chemist and an emerging voice in the national conversation about higher education. He has a clear-eyed view of the challenges facing some traditional liberal arts colleges and is a compelling presenter on changes confronting the higher ed industry.

Dr. Aaron Thompson - Kentucky Council on Postsecondary Education

Dr. Thompson was named president of the Council On Postsecondary Education in 2018 after serving for four years as senior vice president for academic affairs and for five years as executive vice president. In total, his leadership spans 27 years across higher education, business and numerous nonprofit boards. The public universities in Kentucky face a number of challenges around demographics, state funding, and pensions. Dr. Thompson will speak both about the national landscape for public universities and how this might play out in a state like Kentucky.

Jim Hundrieser, Vice President of Consulting - National Association of College and University Business Officers (NACUBO)

Mr. Hundrieser oversees NACUBO's work in providing institutions new strategies to match ambition with aspiration. He focuses on revenue growth, new program development, financial restoration,

building capacity, providing pragmatic solutions, and conducting operational assessments. He has served as an institutional vice president at two private and one public university.

The discussion will be moderated by Susan Fitzgerald, Associate Managing Director and Manager of the Higher Education Group at Moody's Investors Service.

Cost: Free for members of MAGNY and NFMA, \$40 for non-NFMA members

To register for the Higher Education webinar on November 20, 2020 at 12:00 PM ET, [click here](#).

[GASB Outlook E-Newsletter Fall 2020.](#)

[Read the Newsletter.](#)

[Get Short-Term Municipal Bond Exposure in 2021 with "BSML"](#)

Blue wave or red wave, it's important to get bond exposure to offset equities in a portfolio, especially with market forces still tilting on the side of uncertainty. As far as where to look for special opportunities in the bond market, municipal bonds are worth a look to capitalize on short-term movements following a presidential election with the Invesco BulletShares® 2021 Municipal Bond ETF (BSML).

Municipal bonds give investors exposure to a bond market that historically has low default rates. While a company can fold, local government typically won't so the safety of investing in debt paid for by taxpayers adds that extra layer of assurance.

As for BSML, the fund is based on the Invesco BulletShares® USD Municipal Bond 2021 Index. The Fund will invest at least 80% of its total assets in municipal bonds that comprise the index. The Index seeks to measure the performance of a portfolio of US dollar-denominated, issued by US state, state agencies, or local governments with effective maturities in 2021.

[Continue reading.](#)

ETF TRENDS

by BEN HERNANDEZ on NOVEMBER 5, 2020

[HYD: High Yield Munis Still Face Plenty Of Headwinds](#)

Summary

- High yield munis continue to face enormous macro-pressure, as current revenues for local and state governments are well below their pre-pandemic levels.
- HYD holds a large amount of non-rated and non-investment grade bonds. These will be the first to face selling pressure if states do not get a better handle on their finances.

- The fund's top state is Illinois, which is notorious for its budget problems. This past week, residents voted down a proposal to move to a progressive income tax, challenging future revenues.

[Continue reading.](#)

Seeking Alpha

Nov. 6, 2020

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- **Ed. Note:** We have absolutely no idea why we agreed to publish today, given that this is a time for faith, family, solemn reflection, and mayonnaise-procurement. We refer, of course, to [National Sandwich Day](#). And now, a moment of silence for BCB's patron saint, [John Montagu, 4th Earl of Sandwich](#).
 - [Goldman, Citi, BofA, Others to Face Muni Bond Price-Fixing Suit.](#)
 - [Fitch Ratings: ESG in Public Finance 2020 White Paper](#)
 - [Treasury Publishes Updated FAQs – Coronavirus Relief Fund Payments for State, Local, and Tribal Governments – Ballard Spahr](#)
 - [Coronavirus Relief Fund: The Prime Recipient Perspective – GFOA](#)
 - [BDA and Greenwich Associates Partner on Research Report – Fixed Income in an Unprecedented Year](#)
 - [Introducing the Fitch Analytical Comparative Tool \(FACT\) D-Trend for U.S. State Demographic and Economic Analysis \(Description and User Guide\)](#)
 - [Real Estate Recovery, LLC v. Branson Hills Facility Infrastructure Community Improvement District](#) – Court of Appeals holds, as a matter of apparent first impression, that – in light of the controlling provisions of the CID Act and the Jones-Munger Act – assessments levied or imposed by a community improvement district against property after a post-third-offering tax sale survive, such as to impose a continuing lien on the property.
 - And finally, I Believe You're Thinking of Sea Captains is brought to us this week by [Bauer v. County of Erie](#), in which driver was rear-ended in a snowstorm. Rear-endin' dude got out to check on things and offered driver a lift. Driver declined, stating his intention to stay with his car. Cut to three days later, when driver is found frozen solid in said car. We're aware of captains bravely going down with their ships, but had no idea this practice also applied to cars. Maybe the guy's first clue should have been the absence of a string quartet playing "Nearer My God to Thee" on his hood.

UTILITY FEES - CALIFORNIA

[Malott v. Summerland Sanitary District](#)

Court of Appeal, Second District, Division 6, California - October 19, 2020 - Cal.Rptr.3d - 2020 WL 6128117 - 20 Cal. Daily Op. Serv. 10,825 - 2020 Daily Journal D.A.R. 11,217

Owner of 30-unit apartment building filed an administrative mandamus petition against sanitary district alleging it imposed an excessive wastewater disposal charge for the property without regard to the proportional cost of providing wastewater service for her property, in violation of the California Constitution.

The Superior Court dismissed the petition on the ground that owner did not exhaust her

administrative remedies. Owner appealed.

The Court of Appeal held that:

- Owner was not required to exhaust administrative remedies by appearing at sanitary district's public hearing, and
- Declaration of owner's expert on utility and wastewater service rates should have been admitted.

Owner of 30-unit apartment building was not required to exhaust administrative remedies by appearing at sanitary district's public hearing before bringing action against the district for allegedly violating California Constitution by imposing excessive wastewater disposal charge for the property without regard to proportional cost of providing wastewater service, despite the fact owner elected to file an administrative mandamus petition instead of a declaratory relief action; owner's petition asked for ruling that the district's method of calculating residential rates was invalid, an appropriate type of relief in a declaratory relief action, and owner claimed she had no adequate forum at the public hearing to resolve evidentiary issues involved in a challenge to the rate structure.

Declaration of expert on utility and wastewater service rates should have been admitted by the court in proceedings on the challenge brought by owner of 30-unit apartment building to sanitary district's allegedly excessive wastewater disposal charge for the property, which district allegedly imposed without regard to proportional cost of providing wastewater service, in violation of California Constitution; expert said the district used a flawed system of determining and allocating costs for residential users, the result of which was that it was overcharging apartment buildings and undercharging single-family residences, and a trier of fact accepting expert's claims could reasonably find rate payers in apartment units were being substantially overcharged by the district.

LIABILITY - CONNECTICUT

[Costanzo v. Town of Plainfield](#)

Appellate Court of Connecticut - October 13, 2020 - A.3d - 200 Conn.App. 755 - 2020 WL 5988227

Estate of young child who drowned in swimming pool brought action to recover damages against town and town's employees, alleging, among other claims, municipal defendants failed to conduct proper inspection of pool.

Municipal defendants filed an apportionment complaint against owners of property where pool was located and their former tenants who had pool constructed. The Superior Court sustained estate's objections to apportionment complaint and dismissed municipal defendants' complaint. Municipal defendants appealed.

The Appellate Court held that complaint alleged negligence, and not recklessness, and thus municipal defendants could seek apportionment as to negligence of other defendants.

After young child drowned in swimming pool, child's estate alleged in complaint that town's employees, and thus town, had actual notice that pool was constructed in violation of applicable laws and/or that pool constituted hazard to health or safety and failed to conduct an inspection, accordingly, the complaint's allegations were made pursuant to statutory exception to municipal immunity which required proof of actual notice, but not recklessness, and thus, complaint alleged negligence, and not recklessness, on the part of the municipal actors, and town and town's

employees could therefore seek apportionment as to negligence of owners of property where pool was located and their former tenants who had pool constructed.

MUNICIPAL ORDINANCE - KANSAS

[City of Wichita v. Trotter](#)

Court of Appeals of Kansas - September 25, 2020 - P.3d - 2020 WL 5740895

Defendant was convicted in the District Court of operating a club without an entertainment-establishment license. Defendant appealed.

The Court of Appeals held that:

- License ordinance constituted a permissible prior restraint on the time, place, and manner of expression, and thus ordinance did not infringe upon defendant's free expression under the First Amendment;
- License ordinance was not unconstitutionally vague, either on its face or as applied;
- License ordinance was not an unconstitutionally overbroad infringement on First Amendment protected expression;
- Defendant lacked standing to contest ordinance's inspection requirement;
- Sufficient evidence supported finding that night club was open to the public;
- Sufficient evidence supported finding that person operating sound equipment at night club was a disc jockey (DJ);
- Prosecutor's comments in closing argument were within permissible scope of argument, thus, did not constitute prosecutorial-error;
- Prosecutor's comments in rebuttal argument were within permissible scope of argument, thus, did not constitute prosecutorial-error; and
- Trial court's response to jury's mid-deliberation question was not an abuse of discretion.

COMMUNITY IMPROVEMENT DISTRICT ASSESSMENTS - MISSOURI

[Real Estate Recovery, LLC v. Branson Hills Facility Infrastructure Community Improvement District](#)

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

Real Estate Recovery, LLC ("RER") appealed from the trial court's summary judgment in favor of Branson Hills Facility Infrastructure Community Improvement District ("the District"). RER argues that the trial court erred in entering summary judgment in favor of the District, in that the District's assessments did not survive the post-third-offering sale at which RER purchased the four parcels of real estate ("the Parcels")

This case derived from the Taney County Collector's ("the Collector") post-third offering for delinquent community improvement district ("CID") assessments levied by the District against the Parcels, which RER purchased at the offering. RER subsequently filed a petition to quiet title. Thereafter, RER and the District both filed motions for summary judgment. RER argued (in relevant part) that, pursuant to the Community Improvement District Act (the "CID Act") and the Jones-Munger Act, RER's Collector's Deeds terminated all District special assessments as to the Parcels.

The District—also relying on the Jones-Munger Act and the CID Act—argued that the sale did not impair the District’s power or authority to impose and levy “future ... special assessments” within the boundaries of the District, and that either RER’s Collector’s Deeds were invalid or RER owed the delinquent 2015 assessment amount, as RER was required (and failed) to pay that sum before receiving its Collector’s Deeds.

The trial court entered summary judgment in favor of the District, and against RER. RER appealed.

In the appeal, the Court of Appeals noted that the sole and narrow issue before it was whether — in light of the controlling provisions of the CID Act and the Jones-Munger Act — assessments levied or imposed by the District against the Parcels after the post-third-offering sale survive, such as to impose a continuing lien on the Parcels (and a corresponding obligation on RER to remit payment for such subsequently levied or imposed assessments).

The Court of Appeals held that assessments levied or imposed by the District against the Parcels after the post-third-offering sale survive, such as to impose a continuing lien on the Parcels.

QUIET TITLE - NEW MEXICO

[Nash v. Board of County Commissioners of Catron County](#)

Supreme Court of New Mexico - October 19, 2020 - P.3d - 2020 WL 6144594

Landowners brought separate actions to quiet title to real estate located in two counties, and defendant counties asserted sovereign immunity.

The District Court denied county’s motion to dismiss, and the county appealed. The District Court granted the county’s motion to dismiss, and the landowners appealed. Appeals were consolidated. The Court of Appeals affirmed in part, reversed in part, and remanded, holding that the State and its political subdivisions are immune from quiet title actions. Landowners petitioned for writ of certiorari.

The Supreme Court held that:

- Legislature intended statute to create a limited waiver of governmental immunity from being named a defendant in actions to quiet title, and
- It would decline to exercise its discretionary authority to reach landowners’ constitutional argument.

Legislature intended statute to create a limited waiver of governmental immunity from being named a defendant in actions to quiet title; title of statute clarified legislative intent to create a limited waiver of immunity requiring consent of the state to be named in a lawsuit where the state holds or claims a lien against real or personal property and where that lien is being adjudicated or foreclosed, full title of enrolled and engrossed bill was included as an annotation when the law was originally codified, that annotation was likewise included without alteration or amendment when the statute was recompiled, and when legislature enacted statute to effectively establish statutory immunity, it did so aware of the limited waiver it had previously granted.

Supreme Court would decline to exercise its discretionary authority to reach landowners’ constitutional due process argument regarding claims to quiet title against counties, where landowners did not present an appropriately developed case, one where sovereign immunity, interposed to bar quiet title actions, had denied landowners a remedy for the taking of property

without compensation.

IMMUNITY - NEW YORK

[Bauer v. County of Erie](#)

Supreme Court, Appellate Division, Fourth Department, New York - October 9, 2020 - N.Y.S.3d - 2020 WL 5987012 - 2020 N.Y. Slip Op. 05623

Commuter's estate brought wrongful death action against town and police department alleging negligent failure to rescue commuter who was found dead in vehicle three days after becoming stuck in snow bank during a town-issued travel ban during severe winter storm and making calls to town's 911 dispatcher.

The Supreme Court, Erie County, granted summary judgment in favor of town and police department. Estate appealed.

The Supreme Court, Appellate Division, held that:

- Town and police department were acting in a governmental capacity for purposes of municipal negligence, and
- Town and police department did not voluntarily assume a duty of care to commuter to form a special relationship.

Town and police department were acting in a governmental capacity when a commuter made calls to town's 911 dispatcher during severe winter storm in which town had issued travel ban, and thus commuter's estate was required to prove special duty in order to impose negligence liability on town and police department for failing to rescue commuter, who was found dead in vehicle three days after becoming stuck in snow bank and making 911 calls.

Town and police department did not voluntarily assume a duty of care to commuter that would generate reasonable reliance, and thus there was no special relationship on which to impose negligence liability on town and police department for failing to rescue commuter who was found dead in vehicle three days after becoming stuck in snow bank during a town-issued travel ban during severe winter storm and making calls to town's 911 dispatcher; town and police department did not assume, through promise or action, any duty to act on commuter's behalf, and any alleged reliance upon representations made by town or police department was not justifiable.

IMMUNITY - TEXAS

[City of El Paso v. Aguilar](#)

Court of Appeals of Texas, El Paso - October 9, 2020 - S.W.3d - 2020 WL 5987623

Pedestrian brought action against city alleging that she was knocked down and run over by float during city's parade, claiming, under the Texas Tort Claims Act (TTCA), city was negligent in failing to properly oversee and control parade traffic, and also claiming that city negligent in training and supervision of employee who drove the truck that pulled the float, and that city was liable for conduct of employee either by vicarious liability or respondeat superior.

After a hearing, the District Court denied city's plea to the jurisdiction. City appealed.

The Court of Appeals held that:

- Pedestrian alleged city operated motor vehicle that caused her injury, and thus pleaded facts supporting a waiver of city's immunity under TTCA, and
- Pedestrian did not plead facts establishing city waived its immunity under TTCA's "use of tangible personal ... property" waiver of immunity.

Pedestrian pleaded, and supported with evidence, that city used or operated the motor vehicle that caused her injury by directing the driver of that motor vehicle to move it forward, and thus pleaded, and supported with evidence, jurisdictional facts supporting a waiver of city's immunity under Texas Tort Claims Act (TTCA); although pedestrian did not allege that driver of truck that allegedly caused her injury was city employee, it was sufficient she alleged driver moved truck at the direction of a city employee acting within the course and scope of his employment, pedestrian alleged parade generally, and flow of parade floats specifically, were conducted under direction and supervision of city parks department, and city did not controvert evidence of city parks department's control of parade.

Pedestrian's pleadings did not contain sufficient facts to affirmatively demonstrate city waived its immunity under the Texas Tort Claims Act's (TTCA) "condition or use of tangible personal ... property" waiver of immunity, in pedestrian's negligence action against city for injuries sustained during city parade, where pedestrian's pleadings related only to the use or operation of a motor vehicle by the city, and there was no allegation, evidence, or even mention of any tangible personal property causing pedestrian's injury, other than the motor vehicle.

Pedestrian's pleadings which alleged that city was liable for negligently failing to properly oversee and control traffic during parade, and for negligently training and supervising its employee did not contain sufficient facts to affirmatively demonstrate city waived its immunity under the Texas Tort Claims Act; neither pedestrian's pleadings nor the evidence submitted to the trial court demonstrate that these allegations fall within any waiver of immunity applicable to city.

BALLOT INITIATIVES - WASHINGTON

[Garfield County Transportation Authority v. State](#)

Supreme Court of Washington - October 15, 2020 - P.3d - 2020 WL 6106952

Several counties, cities, associations, and private citizens challenged the constitutionality of initiative to limit motor vehicle taxes and fees, under various provisions of the Washington Constitution.

After several parties, including initiative sponsors, a group of taxpayers, county, transit groups, and environmental groups were granted leave to intervene, most parties moved for summary judgment and Superior Court found a few provisions unconstitutional, but severable, and otherwise upheld the initiative. Challengers appealed.

The Supreme Court held that:

- When an initiative has a general title, all that is required by constitutional provision prohibiting bills from embracing more than one subject is rational unity between the general subject and the incidental subdivisions, overruling *Price v. Evergreen Cemetery Co. of Seattle*, 57 Wash.2d 352, 357 P.2d 702;
- Initiative violated constitutional prohibition on bills embracing more than one subject;

- Initiative violated constitutional provision requiring that subject to be expressed in the title; and
- County and municipal plaintiffs did not violate statute prohibiting elective officials, their employees, and persons appointed to or employed by public offices or agencies, to authorize use of any of the facilities of a public office or agency for promotion of or opposition to any ballot proposition.

Voter initiative measure limiting vehicle taxes and fees violated constitutional prohibition on bills embracing more than one subject; initiative included a specific directive to regional transit authority to retire, defease, or refinance bonds, which was not germane to limiting vehicle taxes and fees and the provisions of the initiative that carried out that subject, and initiative combined general and specific provisions, and unrelated local and statewide effects.

Voter initiative measure limiting vehicle taxes and fees violated constitutional provision requiring that subject to be expressed in the title; statement in ballot title that initiative would “limit annual motor-vehicle-license fees to \$30, except voter approved charges,” was deceptive and misleading since the average informed lay voter would conclude that voter approved taxes, such as those used to fund local and regional transportation projects across the state, would remain, when in fact initiative would eliminate a large number of voter-approved charges and remove the very statutory mechanism by which voters could approve charges in the future.

County and municipal plaintiffs who challenged constitutionality of initiative to limit motor vehicle taxes and fees did not violate statute prohibiting elective officials, their employees, and persons appointed to or employed by public offices or agencies, to authorize use of any of the facilities of a public office or agency for promotion of or opposition to any ballot proposition; at the time of the court challenge, initiative was no longer “proposed to be submitted to the voters,” but rather, it was an enrolled piece of legislation.

[Fitch Ratings: ESG in Public Finance 2020 White Paper](#)

[Read the Fitch White Paper.](#)

[Moody's: Supply Chain Changes Due to COVID-19 to Cause Hospital Costs to Increase](#)

Hospital systems will not just have to pay higher costs for personal protective equipment and other medical supplies but also for public construction projects, a new analysis from Moody's said.

The analysis found that higher costs for materials and public spending constraints are going to likely increase the price tags for new construction projects for hospitals. At the same time, hospitals will face higher costs for PPE and other supplies as the supply chain shifts to more domestic manufacturing.

“Increased costs for essential medical supplies and building materials would impact not-for-profit hospitals and healthcare providers as well as public finance sectors with significant capital expenditure programs,” the analysis, released Tuesday, said.

The costs for construction projects are likely to rise due in part to higher costs for imported building

materials as the global supply chain gets more fragmented due to the pandemic.

“Beyond major producing regions in the global construction supply chain such as Chinese copper and steel, Canadian lumber, Italian marble and ceramic tile from Brazil, Spain and Turkey, a range of other materials and equipment are sourced globally, including paving stones, lighting, electrical equipment and elevators,” the analysis said.

State and local governments, which are contributors to hospital spending projects, are also facing major demands to improve infrastructure and are pressured by pension liabilities.

Hospitals are also trying to recover from a massive hit to their patient volumes in March and April at the onset of the pandemic. The financial crisis has caused systems to preserve any liquidity to keep afloat as patient volumes remain below pre-pandemic levels.

This means that some cash-strapped hospital systems have paused construction projects. Michigan Medicine announced back in May that it will hold off on a \$920 million, 12-story hospital construction project, according to the Detroit Free Press.

Hospital system ProHealth Care in Wisconsin suspended construction back in April of a new hospital in Mukwonago in the state. The hospital was supposed to be opened this summer.

Hospitals aren't just struggling with how to move forward with infrastructure projects.

Throughout the pandemic, systems have faced higher costs for PPE and other supplies as demand has surged to unprecedented levels.

Moody's report said that COVID-19 is likely to accelerate a more fragmented international trade and supply chain. The pandemic caused a major disruption to the overseas supply chain, especially in China where most PPE production is centered and massive delays occurred.

Some U.S. lawmakers have called for more production to shift to domestic manufacturers. Premier and 15 U.S. health systems invested in domestic PPE manufacturer Prestige Ameritech.

This trend likely means supply chains will get shorter as production moves to more local and domestic markets.

“A shift away from globalization has the potential to reshape or even reverse the build-up of production bases concentrated in China and other emerging markets,” Moody's said.

However, any adjustments are going to require new costs like building new factories and training workers.

“A greater focus on local production would likely increase inventories, raise costs and lower margins,” Moody's said.

These realignment costs will likely be passed on to hospitals.

“Higher production costs and more fragmented supply chains will increase costs for hospitals and procurement teams sourcing essential medical supplies,” Moody's said.

fiercehealthcare.com

by Robert King | Oct 28, 2020 3:05pm

[CUSIP Global Services Links Environmental, Social and Governance \(ESG\) Data with Municipal Bond Identifiers in Two New Mapping Files.](#)

Partnership Pairs CUSIP Identifier with ACRE Data's Municipal ESG Scores to Provide Quick Reference Snapshot of Values-Based Data for Investors

NEW YORK, Oct. 28, 2020 /PRNewswire/ — CUSIP Global Services (CGS) today announced a partnership with ACRE Data Inc. (ACRe) to provide two new mapping files that link municipal CUSIP identifiers with ACRE's environmental, social and governance (ESG) scores and other geographic and socioeconomic data relevant to each municipal bond issuer. By pairing the CUSIP ID with ACRE's localized ESG scoring data, the new data files will give institutional and retail investors a clearer perspective on ESG risk assessments of their municipal bond portfolios.

The CUSIP is a nine-character alphanumeric security identifier that captures the unique attributes of issuers and their financial instruments throughout the U.S. and Canada. In the municipal bond market, the CUSIP is used by investors to uniquely identify and track municipal securities and link them with the underlying issuing entity (e.g. a municipal water treatment facility or a school system). Through this partnership, CGS will link to geographic, socioeconomic and other regional data, along with ACRE's ESG scoring related to each municipal ID.

Under the partnership, CGS and ACRE will link the first six characters of the unique CUSIP ID for each municipal issue with the geographic identifier (GEOID) hierarchy for the issuer, including state, county, city and school district level detail. The GEOID is a unique geographic identifier assigned by the U.S. Census Bureau to administrative/legal and statistical geographic areas. That GEOID-level detail is then paired with ACRE's proprietary ESG scoring rubric, giving market participants insight into what level of exposure their municipal securities have to certain ESG attributes.

"This new capability addresses a longstanding issue in the U.S. municipal bond market, where interested parties could not easily make the link between underlying issuer and related census, socioeconomic, climate change and crime data," said Scott Preiss, Managing Director and Global Head of CUSIP Global Services. "Through this partnership with ACRE, we are able to deliver even more transparency into the municipal bond market, facilitating links to data that can be used to inform risk models and values-based investment strategies. We are honored to be in a position to support the municipal market in a way that will benefit both institutional and retail markets."

Initially, CGS will provide two new data files augmented with ACRE data:

- **CGSACRe:** This data file will link the first six characters of the CUSIP ID to the GEOID hierarchy for the issuer, supporting the mapping of state, county, city and census tract-level socioeconomic, climate risk, environmental and crime data to the underlying municipal bond issuer.
- **CGSACReESG:** This data file will include all of the information provided in the CGSACRe file, along with ACRE's proprietary ESG scoring data, giving investors a direct link between underlying municipal issuer and ESG exposure.

"We're thrilled to be working with CGS to start the process of embedding of vital ESG metrics into the foundational infrastructure of financial markets," said John McLean, Managing Director of ACRE Data Inc. "We believe this standardized approach to ESG scoring and reporting will help market participants incorporate ESG into their workflows and speed the adoption of values-based investment strategies in the municipal bond market."

For more information on the two new mapping files, please visit: <https://acredata.com/cusip-%2-geoid-file>

About ACRE Data Inc.

ACRe Data Inc. is the largest provider of ESG Scoring, rankings, and underlying datasets for the U.S. Municipal Bond marketplace. ACRE was created in 2015 in response to the need for Alternative Data, and socioeconomic data for the universe of over 50,000 issuers of Municipal Debt in America. ACRE ESG scores and datasets cover all Cities, Counties, School Districts, and States. As of Q2 2020, ACRE utilizes seventy differing datasets for its calculation of ESG Scoring for the U.S. Municipal marketplace. For more information, visit www.acredata.com

About CUSIP Global Services

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About The American Bankers Association

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. Learn more at www.aba.com.

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[Treasury Publishes Updated FAQs - Coronavirus Relief Fund Payments for State, Local, and Tribal Governments - Ballard Spahr](#)

The U.S. Department of the Treasury (Treasury) recently updated its [frequently asked questions](#) (FAQ) related to the CARES Act. Treasury published the [Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments](#) (Guidance) originally on April 22, 2020, and updated the Guidance on September 2, 2020, for recipients of direct payments from the \$150 billion Coronavirus Relief Fund (Fund). The Guidance sets forth Treasury's interpretations on the permissible use of payments from the Fund (Fund Payments). Treasury published the FAQ concerning the Fund to supplement the Guidance on May 4, 2020, and has updated it several times through October 19, 2020. The FAQ provides additional guidance regarding eligible expenditures and the administration of Fund Payments.

The Act was signed into law by President Trump on March 27, 2020. The Act established the Fund, through which Treasury will make direct payments to each state, eligible units of local government, the District of Columbia, U.S. Territories (the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), and Tribal Governments. The direct payments can be used this year to help with state and local government expenses incurred in connection with the COVID-19 pandemic. Eligible state, territorial, local, and tribal governments were required to apply for direct payments from the Fund by April 17, 2020. According to a recent survey of 42 states and territories published by the National Governor's Association, nearly 90% of the Fund Payments have been allocated and approximately 62% of the Fund Payments have already been obligated. The survey respondents indicated that they are on target to spend all of the Fund Payments by the CARES Act deadline of December 30, 2020.

The CARES Act only permits direct payments from the Fund to cover those costs that are necessary expenditures incurred due to the public health emergency with respect to COVID-19; were not accounted for in the budget most recently approved as of March 27, 2020 (the date the CARES Act was enacted) for the government entity; and were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. The Guidance offers Treasury's interpretation of these limits and provides nonexclusive lists of examples of both eligible and ineligible expenditures. The FAQ clarifies that governments are responsible for determining what expenses are necessary and will not need to submit expenditures for Treasury's approval. The FAQ also provides answers to specific questions relating to Treasury's lists of eligible and ineligible expenditures in the Guidance.

Treasury provided additional guidance on the following topics, among others, in the FAQ:

- **Safe reopening of schools** - Fund Payments may be used to cover costs with providing distance learning or for in-person learning. As an administrative convenience, Treasury will presume that expenses of up to \$500 per elementary and secondary student are eligible expenses and schools do not need to document the specific use of funds up to that amount. The FAQ provides examples of permissible costs and illustrations of the \$500 expense presumption.
- **Public health infrastructure** - Fund Payments may be used to upgrade public health infrastructure, such as providing access to running water to help reduce further spread of the virus. Upgrades must be incurred by December 30, 2020.
- **Public university student refunds** - If the responsible government official determines that expenses incurred to refund higher education expenses (such as tuition, meal plans, and activities fees) to students are necessary and are incurred due to the public health emergency, then such expenses are eligible uses of the Fund Payments. Fund Payments may not be used for expenses that have been or will be reimbursed by another federal program (including the Higher Education Emergency Relief Fund administered by the Department of Education).
- **PPP or EIDL Loan** - A unit of government may use the Fund Payments to give a grant to a small business that has also received a Small Business Administration (SBA) Payment Protection Program (PPP) loan or an Economic Injury Disaster Loan (EIDL). However, the receipt of such loans would need to be taken into account when assessing whether the business' need for further assistance from Fund Payments. If the grant from Fund Payments is provided to assist with particular expenditures, the business must not have used the PPP loan or EIDL for those expenditures.
- **Types of employees whose payroll may be covered by Fund Payments** - A state, territorial, local, or tribal government may presume that payroll costs for public health and public safety employees are payments for services "substantially dedicated" to mitigating or responding to the COVID-19 public health emergency.
- **Transfers of Fund Payments to other government units** - States receiving payments may transfer funds to a local government if it qualifies as a necessary expenditure incurred due to a

public health emergency and meets other statutory requirements. Since local governments with populations of 500,000 or less were not eligible for direct payments from the Fund, states should transfer a portion of the Fund Payments they received to such local governments. The FAQ recommends using the per capita allocation formula in the CARES Act, under which a state should distribute 45% of the Fund Payments it received to local governments within the state with a population of 500,000 or less. States may impose restrictions on transfers of funds to local governments to the extent such restrictions facilitate the state's compliance with the requirements in section 601(d) of the Social Security Act. Restrictions that do not directly concern the use of funds, such as restrictions on reopening, are not permissible.

- **Ability to use Fund Payments in conjunction with other CARES Act funding or federal funding for COVID-19 relief** - Expenses that have been or will be reimbursed under any federal program (including reimbursement pursuant to the CARES Act of contributions by states to state unemployment funds), are not eligible uses of Fund payments.
- **Use of Fund Payments to support unemployment insurance funds and costs** - States may use Fund Payments to support unemployment insurance funds separate and apart from the State's obligation to the unemployment insurance fund as an employer to the extent costs incurred by the unemployment insurance fund are incurred due to COVID-19, and may also use Fund Payments for unemployment insurance costs incurred by the State as an employer if such costs will not be reimbursed by the federal government otherwise under another program.
- **Inability of governments to use Fund Payments for government revenue replacement or capital improvement projects** - Fund Payments may not be used for government revenue replacement, including meeting tax obligations or paying unpaid utility fees, or for capital improvement projects if they are not necessary expenditures incurred due to COVID-19. However, a government could provide grants to electricity account holders facing economic hardship to allow them to pay their utility fees and continue to receive essential services, if the government determined this to be a necessary expenditure.
- **Return of unspent Fund Payments to Treasury** - Recipients must return to Treasury unspent Fund Payments or amounts received from the Fund that have not been used in a manner consistent with the Guidance and section 601(d) of the Social Security Act. If Fund Payments are not used in a manner consistent with the Guidance and/or section 601(d) of the Social Security Act, Treasury would seek to recoup the funds from the government that received the Fund Payment from Treasury. Accordingly, governments that transfer a portion of their Fund Payments should ensure that the recipient government uses the Fund Payments appropriately.
- **Deposit of Fund Payments in interest bearing accounts** - Permitted as long as the recipient uses the interest earned or other proceeds of the investment only to cover expenditures incurred in accordance with the Guidance and section 601(d) of the Social Security Act.
- **Retention and disposition of assets purchased with Fund Payments** - Governments may retain assets purchased with Fund Payments if the purchase was consistent with the Guidance and section 601(d) of the Social Security Act. If the assets are disposed of before December 30, 2020, the proceeds are subject to the restrictions on the eligible use of Fund Payments.
- **Audits** - Fund Payments may be used to cover the expenses of an audit conducted under the Single Audit Act, subject to the limitations in the Uniform Guidance. Fund Payments are considered "other financial assistance" under the Uniform Guidance (2 C.F.R. Part 200) rather than grants. The Catalog of Federal Domestic Assistance (CFDA) number for the Fund is 21.019, pending completion of registration.

October 29, 2020

by the Public Finance Group

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[S&P: Mounting Pressures Threaten Stability Of 20 Largest U.S. Cities' Pension Funding](#)

Key Takeaways

- The 20 largest U.S. cities' pension funded levels and medians were stable entering fiscal 2020, but we expect mounting economic pressures to negatively affect funded ratios over the next few years.
- Despite elevated costs, contribution sufficiency for most cities surveyed did not meet our minimum funding progress (MFP) metric, and a handful did not even reach static funding payments necessary to preserve their current funded status. If budgetary pressures persist, funding discipline will worsen in the near term.
- Fixed costs remain elevated for most of the largest cities and are likely to grow as a percentage of expenditures if revenue growth stalls.
- Social risks related to changing demographics and service needs could further pressure budgets as costs grow.

[Continue reading.](#)

26 Oct, 2020

[S&P U.S. Public Finance Report Card: What A Difference A Decade Makes: Housing Finance Agency Rating Stability In Uncertain Times](#)

Key Takeaways

- State HFA issuer credit ratings remained strong and stable from 2019 through the first 10 months of 2020
- Of the 23 state HFAs we rate, 21 are rated 'AA-' or higher
- Ratios in 2019 show mixed performance, but mostly positive trends with equity and assets at decade-long highs
- We expect 2020 financial ratios to deteriorate somewhat due to the COVID-19 pandemic, with higher delinquencies overall and stressed liquidity for some
- HFA management teams have prioritized equity preservation and built intrinsic liquidity for when they need it most; that time may be now.

[Continue reading.](#)

27 Oct, 2020

[Infrastructure After COVID-19: Risk Of Another Lost Decade Of U.S. State Government Capital Investment](#)

Key Takeaways

- If state and local government infrastructure investment had continued at the rate prior to the Great Recession, \$1.5 trillion more in infrastructure spending would have occurred in 2009-2019.
- In the decade following the Great Recession, state governments devoted significantly less of their budgets to capital spending and reduced their overall debt burden.
- As COVID-19 restricts consumer travel, billions of transportation activity-derived revenues that fund capital projects are at risk.
- Federal stimulus was vital following the Great Recession to prevent steeper declines in capital spending, but there is no agreement on a new comprehensive infrastructure spending plan.

[Continue reading.](#)

29 Oct, 2020

[S&P: U.S. Not-For-Profit Senior Living Sector Showed Pre-Pandemic Stability In 2019 But Rating Pressures Loom](#)

Key Takeaways

- The U.S. not-for-profit senior living sector demonstrated consistent occupancy, solid investment income, and improved balance sheet metrics in 2019 that allowed most of our rated organizations to enter the pandemic in a position of strength.
- Rating distributions shifted slightly, although rating actions and outlook changes are infrequent, suggesting consistent credit profiles.
- Macroeconomic trends have a moderate to high influence on the sector, with favorable industry demographics helping to partially offset recessionary pressures.
- The pandemic's effect on our rated U.S. not-for-profit CCRC entities is predominantly neutral to date, although challenges persist.

[Continue reading.](#)

29 Oct, 2020

[COVID-19 Activity In U.S. Public Finance as of 10/30/20](#)

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

[S&P Global Not-For-Profit Transportation Infrastructure Enterprises: Methodologies And Assumptions](#)

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

[S&P Extreme Weather Events: How We Evaluate The Credit Impacts In U.S. Public Finance](#)

Acute physical risks, caused by extreme weather events such as hurricanes, wildfires, and tornadoes can materialize at any time, and can cause significant physical damage and disruption. Across U.S. public finance (USPF), these events can have greatly varied credit impacts. Leading up to and immediately after the event, management teams are focused on emergency responses, public health and safety, and supporting the general welfare of residents. But while they are engaged in fulfilling their immediate responsibilities, credit market participants want to understand the potential short- and long-term impacts on credit. S&P Global Ratings strives to relay any such impact in our ratings.

(The most unanticipated event of 2020, thus far, has been the COVID-19 pandemic, which we view as a social event through its impact on health and safety. For a reference to our coverage of the credit effects of the pandemic, see "[COVID-19 Activity In U.S. Public Finance.](#)")

However, this report focuses on extreme weather events that have occurred recently and the potential credit implications. It summarizes our process and considerations for analyzing and updating the market about our ratings across our USPF sectors during and after an extreme weather event. We also highlight sector-specific issues that we view as key credit considerations during these events.

[Continue reading.](#)

2 Nov, 2020

[Clean Water Initiatives Are Vital for Infrastructure ETFs.](#)

Commodities don't have the panache of most equities but it's an opportunity investors can consider when it comes to investing in needs versus wants. In the case of water, something the world obviously needs, clean water initiatives can be vital for exchange-traded funds (ETFs) that focus on infrastructure.

Today's contentious times amid the pandemic stress the importance of ensuring water resources are untainted. One mechanism for this water is the S&P Global Water Index, which tracks 50 of the largest publicly traded companies involved in water-related business activities.

"As these demands for clean water increase, companies involved in water-related business activities stand to grow in the coming years," wrote Tianyin Cheng, Senior Director, Strategy and Volatility Indices at S&P Dow Jones Indices. "Allocation to water can be systematically captured by rules-based, transparent index construction. Market participants could utilize index-linked water strategies to gain exposure to water, manage water risk, express their sustainability views, or allocate as part of a broader natural resource theme."

[Continue reading.](#)

ETF TRENDS

by BEN HERNANDEZ on NOVEMBER 2, 2020

[CARES ACT - Coronavirus Relief Fund: The Prime Recipient Perspective - GFOA](#)

Analysis | Case Studies

The impact of the COVID-19 public health emergency has stretched beyond any global catastrophe experienced in the past century. With cases of the virus increasing at an astounding rate in the month of March, President Trump declared a national emergency. This set off a chain of events culminating in an extraordinary spike in unemployment rates amid a crashing economy which put immense pressure on State and local governments to continue providing public services through the turbulence of rapidly decreasing revenues. Congress was pushed to take urgent action to address the landslide of challenges that erupted as the country fell into a deadlock, and on March 27th, the \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.

The Coronavirus Relief Fund

Title V of the CARES Act established the Coronavirus Relief Fund (CRF). Under the fund, \$150 billion was allocated to State and local governments with populations over 500,000 to be used for costs meeting the following conditions:

1. Costs must be necessary expenditures incurred due to the COVID-19 public health emergency.
2. Costs must not have been accounted for in the budget most recently approved as of March 27th for the State or government.
3. Costs must have been incurred during the period of March 1 - December 30, 2020.

[Continue reading.](#)

[BDA and Greenwich Associates Partner on Research Report - Fixed Income in an Unprecedented Year](#)

A new research report completed by Greenwich Associates through a partnership with BDA, on bond trading and dealer adaptability in 2020.

[Read the Report.](#)

Bond Dealers of America

October 28, 2020

[Fitch: Federal Aid, Local Markets Drive Uneven NFP Hospital Financials](#)

Fitch Ratings-New York-30 October 2020: Not-for profit (NFP) hospitals that treated more coronavirus patients in the spring and received high-impact funding under the Coronavirus Aid, Relief and Economic Security (CARES) Act have generally seen stronger YTD financials than non-coronavirus hot-spot hospitals that had lower patient volumes earlier in the year, Fitch Ratings says. These disparities should dissipate in 2H20 as most hospital volume has rebounded throughout the

country, although full-year 2020 financials will continue to be marked by uneven results in 1H20. The targeted supplemental aid, which particularly benefited large hospitals in the northeast, and management's ability to quickly flex labor costs, contributed in part to the disparity noted by Fitch in financial results through the end of June and July.

Timing and eligibility criteria for the targeted high-impact funding distributions favored larger hospitals due to the required caseload threshold. The first allocation totalled \$12 billion for 395 hospitals in May, providing \$76,975 per COVID-19 patient. The second distribution, totalling \$10 billion in July, went to 695 hospitals and provided \$50,000 per COVID-19 patient. These funds were in addition to payor reimbursement for COVID-19 patients and general CARES Act stimulus funds. Infections subsequently increased in areas not initially hard hit, but there has been no additional high-impact funding since the July distribution covering COVID-19 admissions through June 10.

High-impact funding was provided as part of the Provider Relief Fund, allocating \$175 billion to hospitals and healthcare providers under the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act. Over \$120 billion has already been distributed, and providers are currently applying for the next \$20 billion allocation as part of the phase 3 general distribution.

Hospitals in current surge areas will not likely see the level of targeted hot-spot funding that was initially distributed to hospitals in the first few months of the pandemic, and will instead need to manage their COVID-19 cases while remaining operational for their non-COVID-19 volume. Providers should be able to recover some portion, but not all, of their coronavirus-related losses with the phase 3 distribution. Other future funding would also help, although any additional federal aid beyond the current \$175 billion program would need Congressional approval.

Besides high-impact funding, labor and geographic location also contribute to uneven financial results among hospitals. With current volumes settling around 95% of previously expected volumes, hospitals with greater labor flexibility are expected to report higher operating results as they better align cost structures to new lower revenue expectations. Staffing is a critical consideration during the pandemic, and many hospitals did not reduce staff in anticipation of an increase in coronavirus cases or because they operate in competitive markets where layoffs would endanger future recruiting and retention. Hospitals with a significant union presence may also have less flexibility to respond to changing staffing needs during the pandemic.

In terms of location, providers with a robust local market to sustain demand for services have done better during the pandemic than those that rely on out-migration from other areas or international referrals, as travel has been disrupted. The sudden but temporary dislocation in residential patterns in high-cost, compact urban markets due to mostly younger residents and families riding out the pandemic in other locations has also contributed to market shifts. These factors highlight the impact of a hospital's local payor mix, which could deteriorate longer term if the high number of unemployed transition to Medicaid or uninsured status.

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

[Introducing the Fitch Analytical Comparative Tool \(FACT\) D-Trend for U.S. State Demographic and Economic Analysis \(Description and User Guide\)](#)

[Read the Fitch Report.](#)

Thu 29 Oct, 2020 - 11:16 AM ET

[Fitch: Coronavirus Pressures Ratings for Some U.S. Toll Roads](#)

Fitch Ratings-New York-28 October 2020: Fitch Ratings expects most U.S. toll roads have enough financial flexibility to weather the global coronavirus pandemic provided that economic conditions continue to improve. However, the Fitch peer review report shows that some issuers with tighter financial metrics at their rating levels or weaker regional conditions are more likely to be downgraded due to the coronavirus pandemic.

Since Fitch's peer review last year, Fitch upgraded two toll road systems prior to the onset of the pandemic and downgraded two others. Additionally, Fitch revised the Rating Outlook on eight toll road systems to Negative but has since returned the Outlook to Stable for two issuers who implemented measures including toll increases to counteract pandemic-related losses.

Already weighed down by legal uncertainty surrounding its governance structure, Fitch downgraded Miami-Dade County Expressway (MDX) back in February. Making matters worse over time will be MDX's exposure to coronavirus-related traffic and revenue losses. "MDX could face legal and political challenges in implementing countervailing measures such as toll rate hikes until a final judicial decision is rendered," said Director Anne Tricerri.

Toll roads already feeling more acute effects of the pandemic include Dulles Greenway, which Fitch downgraded in April reflecting weaker revenues caused in part by the coronavirus crisis. "Resolution of the Negative Outlook for Dulles Greenway will depend on near-term traffic and operational performance in conjunction with clarity into near-term toll increases necessary to maintain adequate coverage levels and financial flexibility while meeting near-term capital needs," said Tricerri.

Fitch has also launched its 2020 update to the interactive peer study for U.S. toll roads, the Fitch Analytical Comparative Tool, or FACT, concurrently with the release of today's peer review.

Fitch's 2020 U.S. Toll Road FACT, contains comparative financial data for a portfolio of 42 publicly

rated operating U.S. toll road issuers and enables graphical plotting of key metrics by region, facility type, asset type and rating. The database includes five years of data, providing a comprehensive base for historical trend analysis specific to individual issuers or within the peer group at large.

Fitch's latest 'Peer Review of U.S. Toll Roads' and the '2020 Fitch Analytical Comparative Tool - U.S. Toll Roads' are available at 'www.fitchratings.com'.

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[Fitch: US Higher Education Revenue Pressures Accelerated by Coronavirus](#)

Fitch Ratings-New York/Chicago-28 October 2020: The coronavirus has heightened enrollment and revenue pressures that higher education faced prior to the pandemic, Fitch Ratings says.

Universities already navigating demographic changes, tuition affordability concerns, discounting pressures, and state funding declines have less flexibility to manage the pandemic revenue hit to operating budgets. We anticipate rating changes will remain predominantly negative into 2021.

We expect more highly selective and flagship research universities to weather these challenges due to stronger demand profiles and greater revenue diversity. Some smaller, rural campuses that preserved or even grew enrollment are also bright spots, likely benefitting from the perceived safety and institutional trust of their student base. However, other private colleges with limited financial strength may face steep budget cuts and outsized use of reserves, and have borne the brunt of most negative rating actions to date in 2020.

According to preliminary National Center for Education Statistics data, enrollment across the US higher education sector fell 3% in fall 2020 over last year, better than Fitch's initial expectations for a 5%-10% decline, with significant variability by institution type. Undergraduate enrollment fell 4% overall, with a 2% decline at four-year non-profit private institutions. First-time students declined 16%, accounting for nearly 70% of the undergraduate decline. Public two-year/community college enrollment fell by 9.4% yoy, and international enrollment saw a sharp 13% drop following several years of milder, consistent declines.

[Continue reading.](#)

Muni Sales Surge 22% Past Old Record in Rush to Beat Election.

- **Monthly sales hit \$71.2 billion, far more than 2017 peak**
- **Governments seize on low rates, calm in the bond market**

America's state and local governments unleashed a record-setting torrent of bond sales this month.

Racing to seize on low interest rates and financial-market calm ahead of the presidential election, public officials sold more than \$71 billion of debt this month, according to data compiled by Bloomberg. That's 22% more than the previous record in December 2017, when governments hurried to borrow before President Donald Trump's tax-law yanked the subsidies from a major refinancing technique.

The borrowing surge reflects the unpredictability associated with the election and a surging pandemic that is threatening to leave governments contending with deepening financial strains as shutdowns hit tax collections.

"Because of the uncertainty tied to the election outcome you are looking at a lot of issuers rushing to market," said Dennis Derby, a portfolio manager for Wells Fargo Asset Management, which has about \$40 billion in muni assets under management. "Issuers who have come to market in the month of October have enjoyed very strong market access."

The October surge was easily absorbed by the market, where yields barely budged and governments have had little trouble raising money despite the toll of the pandemic. It's unclear, however, how the financial markets will respond to the outcome of next week's election, given that President Donald Trump's surprise victory four years ago triggered a bond-market selloff that temporarily sent yields surging.

The pace of debt sales is anticipated to slow dramatically since so many deals were moved up into September and October. Citigroup Inc. analysts said in a note Friday that they expect new offering to plunge by 70% in November due to the election and Thanksgiving holiday.

Buyers have scooped up municipal debt amid indications that the pipeline of new deals will slow in the last two months of the year, leaving 10-year benchmark yields at about 0.92%, up only slightly from 0.83% at the start of the month. The volume of municipal debt sales so far scheduled for next month stands at about \$11 billion, almost one-third what it was in mid-October, according to data compiled by Bloomberg.

During the recent "burst of supply," muni bonds "are holding in," said Kathleen McNamara, senior municipal strategist for UBS Financial Services.

Bloomberg Markets

By Shruti Singh

October 30, 2020, 10:44 AM PDT

Investors Demand More Transparent Green Munis.

Investors are demanding more transparency around green municipal bonds as the bonds grow in popularity, according to Amy Hauter, partner, portfolio manager and head of sustainable fixed income at Brown Advisory, a global investment firm based in Baltimore.

Investors want additional information about whether sustainable municipal bonds are successful in fulfilling their pro-environment missions, Hauter said in a recent interview. Brown Advisory's sustainable fixed-income strategies include its Sustainable Core, Tax-Exempt Sustainable and Sustainable Short Duration composites.

"Municipal bonds are sometimes overlooked by investors when they are considering sustainability, but these bonds can fund sustainable projects" that help the community, she said. In particular, the pandemic has highlighted the need for sustainable projects, particularly for underserved populations. "The pandemic has highlighted the need for such things as affordable housing and mental health facilities and services."

Brown Advisory adheres to the International Capital Market Association's guidelines for sustainable investing, which means the proceeds of the bonds are to be used exclusively for green and social projects, according to the website for ICMA, a not-for-profit membership association with offices in Zurich, London, Paris and Hong Kong that includes private and public sector bond issuers.

Since the pandemic hit, the sale of green bonds has grown, as has the transparency, Hauter said, but the amount of transparency can vary from one project to the next.

"Increasing transparency is where investor engagement comes in," Hauter said. Issuers need to be more engaged with the buyers" to provide information on what guidelines the project developers are adhering to. Definitions for what is considered a green or sustainable bond vary and more clarity is needed, she said.

In addition to the growth in sustainable bonds, the pandemic brought to light the need for projects that serve underserved populations, Hauter added. "The types of projects are changing. For instance, colleges and universities are issuing bonds to include students who may not have the internet access or the technology they need," she said.

To further sustainable causes, Brown Advisory favors bonds in the university and college sector, for hospitals that are addressing health-care disparities, public transit and water and power utilities. Public transportation ridership is rebounding from a low during the first and second quarters, she said.

"You would think people would have pulled back from sustainable investing, including investing in green munis, this year as they focus on other more immediate things," Hauter said. "But that did not happen."

Because there is more interest in green municipal bonds, regulatory pressure probably is going to increase around what it means to issue green and sustainable bonds, she predicted.

FINANCIAL ADVISOR

NOVEMBER 2, 2020 • KAREN DEMASTERS

California's Financials Come in So Late They Reflect Bygone Era.

- **Audited statements just filed for year ending June 2019**
- **It's the last state to file, thanks to botched tech rollout**

On Friday, California's bondholders finally got the most up-to-date look at the government's audited financial statements, revealing how things looked when the economy was in the midst of a record-long expansion, nobody had Covid-19 and the state's savings account was rapidly growing.

California's certified annual financial report for the 2019 fiscal year — which ended 16 months ago — is later than any other state's, a dubious distinction in a corner of the bond market known for the slow pace of such disclosures.

California had blamed the delay on the difficulty multiple agencies had with rolling out a new accounting system called the Financial Information System for California (FI\$Cal), a \$1.06 billion modernization project that has ballooned in cost since original estimates. The coronavirus pandemic subsequently complicated the task.

Many other states were far more timely, closing the books on their years within six months. Big companies do it even faster: Securities and Exchange Commission rules require them to file their annual reports within 60 days.

While California does provide regular updates on budgets and debt, the so-called CAFR includes other information such as pension liabilities that are integral to rating-company decisions. The document filed Friday showed the state's sum of liabilities, deferred inflows and net position had grown to \$329 billion from \$310 billion the previous year.

State Controller Betty Yee had pushed back her estimates several times for when the 2019 report would come out because of the difficulties the state's departments had in using the new technology to produce their statements that go into it. Even Illinois, on the brink of being the first U.S. state to fall to junk status, filed its 2019 audit in April, or about 10 months after the end of its fiscal year.

To be sure, investors are more concerned about the state's response to closing the deficits triggered by the pandemic than about a document that lays out its fiscal position before the onset of the worst recession of modern times.

But the outdated statements illustrate a long-running gripe about the loose disclosure rules in the \$3.9 trillion municipal market. They also leave taxpayers unaware of long-term expenses like workers' pensions, said David Crane, an adviser to former Governor Arnold Schwarzenegger and president of Govern For California, which funds state lawmakers' campaigns.

The costs of these obligations aren't necessarily disclosed in annual budgets but get "spread out over time," Crane said before the 2019 filing came out.

"It's all created without voter approval or knowledge. That's what the CAFR discloses," he said. "And that's how you find out the truth about an enterprise."

Bloomberg Economics

By Romy Varghese

October 30, 2020, 12:17 PM PDT

[**A Junk Bond Rating for Illinois Is on the Ballot.**](#)

The state's standing in the municipal-debt market will depend on voters approving a "fair tax" amendment, but which party holds power in Washington may also play a role.

Illinois doesn't get as much attention as some other Midwestern states around Election Day. It's no secret why: Unlike Iowa, Michigan, Minnesota, Ohio and Wisconsin, it's not even remotely close to being a toss-up for the presidency.

What it lacks in White House intrigue, however, it more than makes up for in its own drama.

Illinois has long held the unenviable distinction of being the lowest-rated U.S. state. Its retirement systems are so underfunded, and have been for such a long time, that the phrase "Illinois pensions" is practically used as shorthand among Republicans in Washington as a reason the federal government shouldn't send a huge aid package to state and local governments to help them get through the pandemic.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

October 28, 2020, 4:00 AM PDT

[**Chicago Mayor Plans Tax Hikes, Layoffs to Fill \\$1.2B Budget Hole.**](#)

Mayor Lori Lightfoot's plan includes raising property, gas taxes

Chicago approaches 600 homicides already in 2020; insight from Chicago Alderman Raymond Lopez on what leaders can do to stop the violence.

Chicago Mayor Lori Lightfoot on Wednesday evening unveiled her plan to fill the city's \$1.2 billion budget deficit, the largest in its history.

The \$12.8 billion plan includes a number of tax increases and cost savings to help fill the hole in the city's budget that was exacerbated by the COVID-19 pandemic.

"Chicago's 2021 Budget represents our city's roadmap toward an inclusive and fiscally responsible recovery from the extensive challenges of the unprecedented COVID-19 crisis," Lightfoot said in a statement.

Lightfoot's plan includes raising \$94 million through property tax hikes, in addition to increasing the gas tax by 3 cents per gallon and the cloud-computing tax by 1.75 percentage points. Also included is an annual property tax increase that is tied to the consumer price index.

More than \$537 million in savings are identified, including \$106 million through layoffs, furloughs and the elimination of unfilled jobs. At least 350 workers are expected to lose their jobs beginning in March 2021.

Lightfoot's plan also calls for the city to refinance \$501 million in debt to take advantage of historically low interest rates.

Other revenue sources include \$76 million of tax increment finance surplus funding and \$30 million from the city's rainy day fund.

The budget provides \$18.6 million in new investments, including an additional \$5.25 million for community-based violence prevention and reduction efforts. Chicago homicides are up 53% so far this year versus last year, according to the Chicago Police Department.

Further community investments include \$1.7 million for youth programming, \$2 million for affordable housing and \$7 million to support workforce training.

Lightfoot's budget proposal comes as Chicago's economy has shrunk 10% as a result of the COVID-19 pandemic.

The sharp drop in economic activity came as the city was just starting to get its fiscal house in order. Lightfoot last year identified more than \$500 million in structural solutions, the most since 2012, to fill the city's then-record \$838 million gap.

By Jonathan Garber | Fox News

October 22

[Chicago Turns to Scoop and Toss, Tax Hikes, and Job Cuts to Manage Coronavirus Wounds.](#)

Chicago's fix for a record \$1.2 billion 2021 budget shortfall and remaining 2020 COVID-19 pandemic tax wounds count on \$948 million of relief through a \$1.7 billion refinancing and restructuring of general obligation and Sales Tax Securitization Corporation debt.

Chicago Mayor Lori Lightfoot's proposed 2021 budget totals \$12.76B when counting all funds, including a \$4 billion corporate fund.

Heading into 2021, the city was still working to close an \$800 million revenue hole caused by the pandemic's economic blows while the 2021 gap was estimated at \$1.2 billion due to roughly \$800 million of pandemic-related tax losses and \$400 million of rising structural costs.

The \$1.2 billion shortage is wiped out through a mix of structural measures like tax increases and efficiencies as well as non-recurring, one-shots like debt restructuring and furloughs. The city will take \$501 million of debt savings and relief, bank \$184.9 million of new revenue, and cut \$537.2 million in costs through savings and efficiencies. It mostly leaves the city's healthy reserves alone.

The city attributes 35% of its 2021 hole to structural demands and 65% to COVID-19 blows with 47% of the measures tackling the \$1.2 billion shortfall structural in nature.

"We believe that these structural reforms will set us up well to continue along our path toward structural balance, we which are targeting for 2023. And I hope you will agree and ultimately vote to support this budget," Lightfoot told the City Council in her budget address Wednesday.

Staying on course with the goal to structurally balance the city's books by 2023 will prove more difficult given a post-debt restructuring spike in 2022 of about \$600 million in debt service and a \$300 million price tag to cover an actuarial pension contribution for the municipal and laborers funds. Those factors are likely to weigh heavily in what rating agencies have to say on the proposed plan.

The city's general obligation credit is rated junk-level by Moody's Investors Service, at Ba1, it's rated BBB-minus by Fitch Ratings, BBB-plus by S&P Global Ratings, and A by Kroll Bond Rating Service. S&P moved the outlook to negative in April over mounting pandemic pressures that make structural balance targets a tougher task. The others assign a stable outlook.

Chicago's GO paper is thinly traded but recent trades put spreads at about 325 basis points to the Municipal Market Data's top benchmark, said Daniel Berger, senior market strategist at MMD-Refinitiv.

"Ratings agencies have demonstrated unusual patience, due to the unusual circumstances" said Brian Battle, director of trading at Chicago-based Performance Trust Capital Partners, who added, at first glance the budget proposal and debt restructuring appears "reasonable as this voluntary quarantine is unprecedented."

Market participants will welcome that spending cuts and tax increases are part of the equation and may be willing to swallow the return to scoop-and-toss debt restructuring. "The mayor's office is being responsible by talking about tax increases and spending cuts," Battle said, adding that on debt restructuring the city "did it way before there were circumstances" like the pandemic.

Bigger questions loom large over the city's post-pandemic fiscal picture. "The more salient question for the city is what is the long-term revenue and spending plan. What is the one, three, and five projections for revenue increases and spending cuts and how does the city attain fiscal stability," he said.

The package now heads to the council with hearings beginning Monday and a vote expected next month. While Lightfoot labeled the tax hikes and layoffs modest, they may prove a hard sell for some council members who prefer other tax proposals, want police spending cut and more spending on human services, and may look skeptically at the debt refinancing.

"I think it is a fair division and reasonable approach to structural change during this pandemic with little federal help," said Alderman Scott Waguespack, Lightfoot's Finance Committee chair, who was a frequent critic of the former mayor's budgets. "They have a balance in here where we cannot do all structural changes at once. We don't want to hit personnel too hard, or raise property taxes too high but I believe rating agencies are looking for a good balance."

The \$537.2 million of savings and efficiencies include \$106.3 million in personnel reductions from measures like five furlough days and the elimination of 1,900 positions, including 350 layoffs. The budget cuts about 600 police department positions, but Lightfoot said she has no plans to cut other police spending, especially given demands associated with reforms under a consent decree.

The city will sweep old accounts, moving \$59 million to the corporate fund and will require Chicago Public Schools to reimburse it for \$40 million of pension contributions for CPS employees who participate in the city's pension funds and \$54 million will come from improved rates in healthcare contracts.

The \$184.9 million of new revenue comes from a \$33.5 million increase in an expected tax-increment

financing surplus declaration, a \$30 million draw on city fund balances, new tax revenue, including a \$93.9 million property tax hike, including \$16 million for new property and a \$42.5 million hike due loss of collections. The city lost litigation filed by the pension funds and now must make up the difference between what's levied to cover pension contributions and what's collected. Future annual property tax hikes will be tied to inflation, a shift from existing practices. The city will also raise \$25 million from a hike on cloud computing and motor fuel taxes.

Council members have pressed the administration to dip deeply into reserves. The city's fiscal chief Jennie Huang Bennett has pushed back, warning that preservation of the reserves that total \$900 million between an unassigned fund balance, a cash reserve, and long term reserves are central to maintaining the city's ratings and weathering a prolonged pandemic hit.

"To be clear, folks, we are not experiencing a rainy day. It is truly a rainy season, and we must continue to be prudent and cautious," Lightfoot said.

The city will declare a \$300 million TIF surplus, pocketing \$76 million or \$33.5 million more than previously anticipated. Chicago Public Schools receives half of any surplus and the city's sister agencies and Cook County receive the remainder.

Pension appropriations rise to \$1.815 billion in 2021 from \$1.68 billion. The city is carrying \$31.8 billion of net pension liabilities, and funded ratios for the funds are at 18% for firefighters, 21% for police, 24% for municipal, and 43% for laborers. The contributions shoot up in 2022 to \$2.245 billion due to a roughly \$300 million spike when the laborers and municipal fund payments move to an actuarial level and due to modest growth in contributions to police and firefighters which moved to an ARC this year.

Debt

A cornerstone of the 2021 package that will also cover half of the 2020 hole will come from a \$1.7 billion debt refinancing and restructuring. If approved by the council, the city would issue the first piece of the refinancing in December, according to budget documents.

Lightfoot refinanced GO and other debt with \$1.5 billion of borrowing under the GO and STSC credits in January generating a total of \$300 million in savings that were mostly taken upfront. Bennett has stressed the upfront savings may mark a one-time maneuver but did not constitute scoop-and-toss, as maturities were not extended and savings were achieved in all maturities.

"Unlike the refinancing in 2020, the city will be increasing the debt service on the bonds in future years and extending the debt," reads a city description of the proposed transaction. "Overall, the city will use the refinancing savings to help pay for the cost of the debt restructuring and overall the transaction will still generate positive savings on a net present value basis."

The city says the debt will be layered into STSC debt structure to create a level debt service schedule that meets projected of sales tax collections, which are pledged to payoff the bonds. A chart included in the budget presentation shows a reduction in combined GO and STSC debt service to about \$200 million in both 2020 and 2021 from existing levels of \$600 million in 2020 and \$700 million in 2021.

The expected \$800 million of debt service owed in 2022 is held steady and continues with modest increases through 2029, holds mostly steady through 2032 with higher payments owed through 2047 with new debt piled on in 2048-2050.

The STSC bonds are sold through a bankruptcy-remote entity that garners higher ratings in the

double-A to triple-A category, depending on whether they are senior or second lien.

Pushing off 2020 and 2021 debt service and extending debt will mark a return to the past fiscal tactic of scooping and tossing debt first used by former Mayor Richard M. Daley as he sought to hold the line on property taxes while financing infrastructure projects. Mayor Rahm Emanuel inherited the practice when he took office in 2011 and then phased it out in his second term.

Some market participants considered the city's first issues under the STSC, which was established in 2017, as "scoop-and-toss lite" as the maturities of some general obligation bonds being refunded were pushed a few years out and interest was capitalized. The city's last deal also capitalized interest.

By Yvette Shields

BY SOURCEMEDIA | MUNICIPAL | 10/21/20 05:46 PM EDT

[Will the Lack of Federal Financial Support Impact Municipal Financing?](#)

In the run-up to the presidential election, BrandeisNOW asked faculty to provide analysis and insight into some of the most pressing issues facing the country. This is part of the series. Dan Bergstresser is an associate professor of finance at Brandeis International Business School.

The COVID-19 pandemic and resulting economic disruptions have cost the United States more than 200,000 lives and led to the steepest drop in gross domestic product (GDP) in history.

The effect of this crisis on state and local budgets has been particularly sharp and has come at a time during which the need for services provided by state and local governments is greater than ever.

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, also known as the "CARES Act." It included \$150 billion in direct support to state and local governments, but it was still not sufficient to help states and localities avoid steep cuts in services.

An additional stimulus bill, the Health and Economic Recovery Omnibus Emergency Solutions Act (the "HEROES Act") has been introduced in the House of Representatives. It includes an additional \$400 billion in assistance to state and local governments, but the chances of passage appear very cloudy at the moment.

Although the federal government will employ deficit spending to smooth the effect of temporary economic disruptions, states and localities generally do not employ deficit spending to cover cyclical gaps in operating budgets.

Without more federal support for states and localities job losses and cuts in services will be inevitable. These cuts will compound the economic disruption for people who depend on their services, in particular families with school-age children and especially lower-income families.

The extent to which states and localities have been affected by the pandemic and recession depends to some degree on how they generate revenues to fund their budgets.

Typically, about a third of state revenues come from the federal government. The rest mainly comes

through state-imposed taxes on income, business and retail sales. At the local level, about a third of revenue comes from transfers from states to localities, with the bulk of the remainder coming from property taxes.

But there are differences across the states, with states like Oregon and New York being particularly reliant on income taxes for revenue, while Florida and Texas are particularly reliant on sales taxes.

These differences in revenue sources and the unusual nature of this pandemic-driven recession make their impact on state and local budgets different from place to place.

The impact on retail sales and sales taxes have so far been greater than the impact on personal income, so the effect of this recession on state and local budgets will be larger in places that are more dependent on sales taxes and in places where sales and income tax receipts have been more affected by the pandemic.

For example, the Colorado legislature is now forecasting a 20 percent decline in revenue in 2021, while in Idaho the state is now forecasting a 1 percent decline.

Investing in our families and school-age children is one of the most important and highest return investments that our society can make. Cuts to these services will affect our country for years to come.

brandeis.edu

By Dan Bergstresser

Oct. 28, 2020

[New York Subway's Pain Could Bring Riches for Bond Investors.](#)

Riders and revenues are way down at the Metropolitan Transportation Authority. Its bonds look risky, but some investors are tempted.

You can make a lot of money betting on government bailouts.

Swooping in to buy the dirt-cheap stocks and bonds of troubled entities is a time-honored — and profitable — tactic throughout the investing world. When deep-pocketed public saviors come forward, such a wager can pay off handsomely.

Given the vital role it plays in the economy of the nation's largest city, the Metropolitan Transportation Authority, which runs New York's subway, bus and commuter rail system, is a likely candidate for a lifesaving infusion of government cash.

"It's very explicitly too big to fail," said Matt Fabian, a partner at the research firm Municipal Market Analytics who has been pitching M.T.A. debt to his clients.

The agency was dealing with high costs even before the pandemic, and the beating the coronavirus has given its finances has raised the possibility of deep service cuts. That economic pressure is translating into low bond prices and some of highest — and therefore most tantalizing — yields available to investors anywhere in the bond markets.

Investors who buy 10-year M.T.A. bonds right now — the agency was expected to issue around \$258 million more in debt on Thursday — are capturing a yield of about 4 percent. That's roughly three percentage points more in annual interest than they would get buying the safest long-term municipal debt. It also trounces the yields of other major transit systems, which hover around 1 percent.

If it were a for-profit corporation, the M.T.A. would most likely be heading for bankruptcy. Its budget deficit has exploded, and last week Fitch downgraded the agency's bond rating, citing weak ridership and revenue outlook.

But the M.T.A. is a quasi-governmental body — technically a public benefit corporation, formed in 1968 — that's deeply entwined with the economic health of the region. That means its risk of default is almost infinitesimal, investors and analysts say.

There's another reason to like these bonds: federal and state tax exemptions on municipal debt. To match the after-tax return on M.T.A. bonds without taking on a lot more risk, analysts say, investors would need to find relatively safe corporate bonds yielding almost 9 percent — all but nonexistent nowadays.

Len Templeton, president of Templeton Financial Services in Chandler, Ariz., has allocated roughly 5 percent of his client assets to the securities issued by the M.T.A. He said he couldn't imagine the agency's being allowed to default.

"I mean, how could you not think they should have public transportation in a city like New York?" asked Mr. Templeton, who manages some \$425 million in client assets in bond funds. "And how can the city survive and do what it needs to do without it?"

Even Fitch, in downgrading the agency's rating to A- from A+, said the M.T.A. continued to have "the highest strategic and economic importance" and would continue to benefit from government support.

Mark Paris, who manages New York and national municipal bond funds for the asset management firm Invesco, said M.T.A. bonds were "definitely a great place to get some yield." He has been adding them to his holdings, but warned of violent swings in their prices as the agency struggles to stabilize itself over the next few years.

"Is there going to be volatility?" he said. "Yes."

In fact, there already has been quite a bit. Prices for M.T.A. bonds are normally quite stable, but as the virus gripped New York in March and April, they plunged more than 20 percent and sent yields shooting up.

In normal times, the M.T.A.'s massive ridership is a stabilizing force: Subway, commuter train and bus fares, as well as bridge and tunnel tolls, matched 50 percent of the operating costs in 2019.

"It's a strength because it reduces their reliance on statewide and citywide politics," Mr. Fabian said.

That strength disappeared with the arrival of the pandemic. Subway ridership — averaging around 5.5 million on weekdays last year — collapsed more than 90 percent as a result of widespread shutdowns intended to limit the spread of the virus, which was killing more than 500 people a day in the city. Even with infection rates well down from their peak, subway ridership is still 70 percent below last year's level.

And that means the M.T.A. needs money — badly. Before the pandemic, the agency projected an estimated surplus of \$270 million for 2021. Now? It is projecting a deficit of roughly \$5.8 billion. Its annual deficit is expected to add up to about \$16 billion by 2024.

While investors and analysts expect that financial help will materialize, exactly where it will come from and when it will arrive aren't clear.

The agency, which already received \$4 billion under the CARES Act, is asking for some \$12 billion in emergency aid from the federal government to make it through next year. But talks in Washington have been stuck in neutral from months.

If Democrats capture both the White House and the Senate next week, most observers predict the federal government will come through with more help. But even if Republicans retain control in Washington, that won't be the end of the line for the M.T.A. Rather, investors believe that would just force the state to cough up the money the agency needed.

"The expectation is the State of New York can and will support the M.T.A. if additional federal moneys aren't forthcoming," said Howard Cure, director of municipal bond research at Evercore Wealth Management in New York.

There's a simple reason: New York City is the economic engine of the state, providing nearly half its jobs. By itself, Wall Street — the securities industry centered in Manhattan — accounts for roughly 17 percent of the state's tax revenues. The state simply can't afford not to keep the M.T.A. running and New York City functioning.

Analysts at credit ratings agencies are already beginning to factor in the financial toll that additional support from Albany could take on the state. Moody's analysts downgraded New York State's bond rating this month, noting the "state assistance in various forms" that the M.T.A. will require even though the state has reduced financial resources.

So if a bailout is such a sure thing, why haven't people rushed to buy the M.T.A.'s bonds?

In part, the answer has to do with some of the idiosyncrasies of the market for municipal bonds: how heavily such bonds are traded, and by whom.

At roughly \$4 trillion, the market is relatively small, with most bonds traded irregularly. Its prices might not accurately capture information as quickly as prices in some other markets. And it's dominated by affluent individuals who buy municipal bonds for their safety and tax benefits. Such investors are easily turned off by noisy and negative headlines, advisers said.

That can cause wealth managers to steer clear — despite attractive yields — simply to avoid the risk of aggravating clients.

"Holding an M.T.A. bond now, versus not holding one, means triple or double the number of conversations with an angry dentist from Long Island," Mr. Fabian said. "There's a cost to that."

The New York Times

By Matt Phillips

Oct. 30, 2020

The MTA Is Selling Green Bonds This Week. Investors Should Prepare for More Borrowing.

New York's Metropolitan Transportation Authority is planning to sell tax-exempt green bonds backed by the agency's transportation revenues. Analysts at Fitch have downgraded that debt, citing the risk that the country's largest transit system could borrow a lot more in the future as the pandemic has sharply reduced ridership.

The MTA said it would sell \$257.5 million of bonds this week to pay down bonds that mature in mid-November. The bonds are backed by a lien on revenues from the commuter and transit system, along with some of the surplus from the city's bridges and tunnels, state-and-local-government operating subsidies, and revenue from other miscellaneous taxes and fees. They will also be green bonds with certification from the Climate Bonds Initiative, thanks to their use financing mass transit.

The offering comes as revenues have slumped for New York's subways, buses, and commuter rail, however, as pandemic-wary commuters avoid public transit. On Oct. 23, for example, subway ridership was down nearly 70% from last year, bus ridership was down more than 50%, Long Island Railroad ridership was down 71%, and Metro-North ridership was down 76%. Bridge and tunnel use was down 12% from last year.

In a recent investor presentation, the MTA reiterated past estimates that put its budget shortfall at \$3.2 billion for this year and \$5.8 billion for 2021 in the absence of federal funding. MTA Chairman and CEO Patrick Foye has requested \$12 billion in federal grants for the next two years to cover the deficits—but it isn't clear how quickly the MTA will be able to obtain aid from Congress, or how much aid it will end up receiving.

Until the outlook becomes clearer, officials estimate they can reduce this year's deficit by \$1.1 billion by cutting spending and tapping other sources of cash within the agency, such as retirement-benefit reserves.

Beyond those steps, board members have proposed tapping the full \$2.9 billion of cash available from the Federal Reserve's Municipal Liquidity Facility, though the MTA has only a little more than a month to file a Notice of Interest to meet the Fed's current requirements. The MTA has already tapped the Fed facility once, borrowing \$450 million in August.

New York state has given the MTA permission to borrow to cover up to \$10 billion in deficits through 2022. But ratings-firm Fitch says that increases the MTA's reliance on capital markets, along with its "sensitivity to the timing and strength of an eventual revenue recovery that is highly dependent on public health and economic conditions and mass transit ridership behaviors."

For now, the pandemic-related revenue crunch has prompted Fitch to downgrade all of the MTA's outstanding transportation revenue bonds by two notches, to A- from A+.

The firm's analysts estimate that the transit authority is burning \$300 million of cash per week, and have a "Negative Outlook" for the debt, meaning that future downgrades are more likely than upgrades.

On the bright side, the MTA has about \$5.2 billion of liquidity on hand, with about \$2 billion of that in cash, according to Patrick Luby, analyst with CreditSights.

What's more, the market's pricing of the MTA's bonds does seem to reflect the risks created by the

pandemic—meaning that while the MTA will likely need to pay high interest rates to borrow, the bond yields may be too high for risk-tolerant investors to resist.

The spread between the MTA's bonds and AAA-rated benchmark muni yields closed around 338 basis points (or about 3.4 percentage points) on Friday, Luby wrote in a recent note. That is up from a spread around one-tenth that size—33 basis points—at the start of this year. In its investor presentation, the transit authority cited “strong legal provisions [enacted] to ensure timely payment” of those interest costs, such as a New York state law that prevents the MTA or its affiliates from voluntarily filing for bankruptcy to reorganize its debt.

The bonds are expected to price on Thursday, according to Fitch.

Barron's

By Alexandra Scaggs

Oct. 28, 2020 6:15 am ET

[Why a Blue Wave Could Boost the Municipal Bond Market.](#)

The \$3.9 trillion municipal bond market could be a big winner if Democrats sweep the White House and both houses of Congress. Such a “blue wave” scenario is now given odds of better than 50% in betting markets.

The muni market would benefit in multiple ways. Financially strapped state and local governments could be expected to get relief from a stimulus bill along the lines of the \$2.2 trillion bill that passed the House of Representatives, providing about \$436 billion to them.

“A Democratic sweep is a grand slam for state and local governments,” says Dan Clifton, head of policy research for Strategas. He points to a stimulus bill and the prospect of additional federal Medicaid funding for states, as well as the potential reinstatement of full deductibility of state and local taxes.

Such a move could curb the flight of wealthy residents from high-tax states like California, New York, and New Jersey to places like Florida and Texas, which have no income taxes.

Joe Biden wants to raise the top federal income-tax rate back to 39.6% from 37%, and that would enhance the allure of munis for individuals. Biden also wants to raise the corporate tax rate to 28% from 21%, and that would probably increase demand from corporations for muni debt.

“If we get a blue wave, it's likely that tax-exempt bonds would do very well,” says Peter Hayes, head of the municipal bond group at BlackRock. “Munis are very cheap and are not factoring in higher tax rates.”

Triple-A-rated 10-year munis now yield about 0.95%, 110% of the yield on the 10-year Treasury note, now at 0.85%. That is a high percentage relative to the past 20 years. It has usually been below 100%.

The yield on the 10-year muni is up from a low of 0.55% in August but is historically low, dampening demand from individual investors. Hayes sees a favorable backdrop for the rest of the year.

Muni issuance was heavy in October, at about \$70 billion, although a growing chunk of that—now about 30%—is in the taxable muni market. Muni supply is expected to fall in November, and that could bolster the market.

While state and local governments are apt to get more financial relief from a Democratic-controlled Washington, long-term fiscal challenge stemming from the pandemic are likely to persist. Barron's highlighted this risk in a cover story in August.

"There's an enormous loss of revenue going on, and we don't know how long it will last," Richard Ravitch told Barron's at that time. Ravitch is the former Metropolitan Transportation Authority chairman who helped pull New York City back from the brink of bankruptcy in the mid-1970s. He is now director of the Volcker Alliance, a nonprofit group that advises on effective government.

The metropolitan New York area has been hard hit economically by Covid-19. Moody's Investors Service recently downgraded the credit ratings of New York City, New York state, and the Metropolitan Transportation Authority, which operates the city's subways, buses, and commuter rail networks.

The city and state remain highly rated at double-A2, while the MTA, which faces a grave financial outlook because of sharp declines in ridership, has a still-solid investment-grade rating of single-A3.

Reflecting fears about the region's outlook, long-term New York City debt yields about 2.5% and MTA debt yields 4%. That compares with a yield of about 1.75% on top-grade long-term munis.

Investors, however, may want to steer clear of MTA bonds, given the agency's high debt load of \$44 billion, large projected deficits in the coming years, and a need for federal financial help.

Barron's

By Andrew Bary

Updated November 1, 2020 / Original October 30, 2020

[What's at Stake for Local Governments in the Presidential Election.](#)

For all the years Donald Trump has lived in Manhattan, he's cast American cities as the enemy during his presidency.

Big cities—in particular those run by Democratic mayors—earned particular vitriol from the president, who has deemed them "rodent infested," "disgusting" places sieged by violence "worse than Afghanistan." He's sent federal agents in to crack down on protests against the wishes of local leaders, threatened to withhold federal funding from "anarchist" and "sanctuary" cities, and castigated local leaders when they fight his policies.

The antagonistic relationship has many in local government banking on a reprieve if former Vice President Joe Biden ousts Trump on Election Day.

"The Trump administration has a hostile relationship with local government," said Mitch Landrieu, the Democrat mayor of New Orleans from 2010 to 2018 and former president of the U.S. Conference of Mayors. "There has never been a level of hostility that exists today in previous administrations."

But the animosity hasn't undercut all of the Republican president's relationships with local government—Trump received a standing ovation when he spoke at the National Association of Counties conference in March and promised to continue to be a “friend, partner, ally and resource” to local governments. It was the first time a sitting president had addressed the NACO conference, which includes both rural and urban county leaders, a symbol some Republican officials say reflects the Trump administration's accessibility to local government officials.

“The president and his directors have been available,” said Ron Wesen, a commissioner in Skagit County, Washington and the past president of the National Conference of Republican County Officials. “It was really impressive to me the outreach the administration had.”

The clear partisan split isn't as evident when it comes to the most pressing crisis that local governments currently face: the coronavirus pandemic. Lobbying groups for counties and cities agree that much more federal assistance is needed, both to pay for the Covid-19 response and help governments deal with budget shortfalls that have already resulted in furloughs and layoffs.

This spring, Trump at times signaled a willingness to consider more direct aid for state and local governments than was included in the CARES Act package approved in March. But that sentiment has since largely evaporated. More recently, the president has echoed Senate Republicans who've said they don't want to “bail out” Democratic cities and states they describe as poorly run.

That means the outcome of the election could be a determining factor in whether states and localities get more aid. The Democratic-led House passed legislation in May that would have provided nearly \$1 trillion in direct aid to state and local governments. On Thursday, House Speaker Nancy Pelosi described state and local assistance as one of the key sticking points in working out a new deal.

While Senate Republican resistance means a Democratic takeover of the Senate is probably a necessary condition for a sizable new package, Biden is vowing to help and has promised local leaders direct access to the White House.

“We should have a local emergency fund that drives resources straight to you, expand your health infrastructure, reimburses overtime pay for the essential workers and first responders,” Biden said during an address to the U.S. Conference of Mayors in late September. “Whatever your community needs the most.”

Cooperation with Biden

Political observers say there is plenty of reason to believe a Biden administration would approach relationships with local governments differently than Trump. Biden has a strong record of engaging local leaders and taking the time to understand how local government works, said Frank Shafroth, the director of the Center for State and Local Government Leadership at George Mason University.

In particular, Shafroth points to Biden's role as vice president working with the city of Detroit after the city filed for bankruptcy in 2013. Detroit's was the largest municipal bankruptcy filing in U.S. history. Under President Obama, Biden helped the city secure federal transportation funding for several projects and was credited as advocating for the city's needs throughout the process.

“It shows he has experience and that he appreciates those cities,” Shafroth said of Biden's interactions with city leaders. “He listened and had he not listened, I don't know if Detroit would exist as a city today.”

It's that willingness to listen and get involved at the local level that Debbie Goettel, chairwoman of

the National Democratic County Officials, said would be beneficial in helping to get local governments back on track as they emerge from the coronavirus pandemic. Collaborating with the Trump administration on infrastructure projects, the type of investments that could help revive local economies post-pandemic, has been slow going, Goettel said. She placed the blame on the departure of federal employees with experience working with local governments, including many who have not been replaced.

“It’s been harder and it’s been slower,” said Goettel, a commissioner in Hennepin County, Minnesota, specifically citing delays on a light rail project that only recently received grant funding from the Federal Transit Administration.

She believes a Biden administration would take requests from local governments more seriously.

“Trump is listening at a much higher level. Biden would really get down to a local level and really listen to us,” Goettel said.

Last month, Biden told local government leaders that improving relationships with them would be a goal of his administration should he win.

“Whether your city is red or blue, I’m going to be there,” Biden said during the mayors’ conference. “Every American community deserves the full support of the American president. The worst thing that a president can do is drive wedges that make your job tougher because he thinks it benefits him or stirs up chaos in your communities.”

Trump’s Open Door

Despite Trump’s public brawls with big-city mayors, some Republican local leaders said they have found his administration to be particularly accessible.

The “back channels were always open” when it came to discussions between the administration and state and local governments about increased federal funding as part of a coronavirus stimulus bill, said Bryan Barnett, the Republican mayor of Rochester Hills, Michigan and past president of the U.S. Conference of Mayors.

“We found at times an ally in the White House, at times an obstacle,” Barnett said of the still unsuccessful discussions. “We were always talking about numbers we thought that could work.”

The Trump campaign did not return a request for comment inquiring about his record on working with cities.

Trump has prioritized “law and order” on the campaign trail and the U.S. Department of Justice has provided federal resources and pushed efforts to crack down on violent crime in a handful of Midwestern cities. Trump continues to have high support among police and sheriffs.

However, when local government leaders have balked at enforcing Trump’s policies, the president has tried to counter by taking away federal money.

Early on in Trump’s tenure, the Justice Department sought to link the award of law enforcement grants to local and state cooperation with federal immigration authorities as part of the president’s bid to crack down on illegal immigration and “sanctuary cities.” But the policy has been stymied, as three of four federal appellate courts have ruled against Trump’s sanctuary city policies.

More recently, Trump tried a similar tactic when he announced an executive order that would seek

to limit federal grants to “anarchist” jurisdictions that he said did not do enough to contain violence during national protests this summer against police brutality. Among the grants the White House has considered targeting for cuts are millions of dollars for coronavirus relief, as well as support for HIV treatment and health screenings for newborns, Politico reported this month.

“We have other cities that are out of control; they’re like warzones,” Trump said during a press conference over the summer. “We’re not going to put up with that.”

Cities’ Needs Don’t Change

No matter who is declared the winner of the presidential election next month, the most pressing challenges facing cities will remain the same, Barnett said.

“Mayors are going to get up on Nov. 4 and continue to have to lead their cities,” he said.

Because so many pandemic-related challenges—from reopening schools to help with distribution of any future Covid-19 vaccine—are local responsibilities, it will be important for the winner to forge strong working relationships with local governments, political observers said.

“This country is made of local, state, and federal governments,” said Wesen, the Washington state county official. “Our taxpayers expect us to work together.”

Route Fifty

By Andrea Noble,
Staff Correspondent

OCTOBER 29, 2020

[Fortress Fails to Sell Record Bond Deal for Las Vegas Rail.](#)

- **‘There is not a lot of liquidity,’ California treasurer says**
- **California to take back bond capacity, offer to other projects**

Fortress Investment Group is postponing its plan to build a train to Las Vegas from Southern California after failing to sell a record amount of unrated municipal debt to finance the speculative project, showing the limits of investor appetite amid an economic downturn.

Since the end of September, Fortress, through its company Brightline Holdings, had been marketing \$3.2 billion of debt to be issued through California and Nevada agencies. It subsequently reduced the size to a still-record offering of \$2.4 billion and tried to purchase some of the bonds it sold for a Florida rail as a way to entice investors to commit to the Las Vegas sale before terminating that buyback offer Friday.

“Unfortunately there is not a lot of liquidity in the market and a lot of economic uncertainty at this moment,” California Treasurer Fiona Ma said Saturday by email. “The project is postponed until market liquidity improves.”

Brightline spokesman Ben Porritt confirmed the postponement. “We will continue to move the project forward,” he said Saturday by email.

California and Nevada had given Fortress the ability to sell private activity bonds, which are meant for ventures for the public interest that are capped annually in each state by the federal government. California had provided the bulk, \$600 million, which was leveraged four times to \$2.4 billion in bonds because of federal rules extending that special boost to railroads.

California had given Fortress a Dec. 1 deadline to sell the bonds. Now, Ma said, the state will take back the bond capacity and give it to affordable housing projects and other kinds of qualifying ventures, such as recycling facilities. Before Fortress won its allocation from Ma's debt committee earlier this year, affordable housing advocates had pressed for all of the state's low-cost financing resource to go toward easing California's homelessness crisis.

Ma said she didn't know when Fortress would return to California to request bonds again.

"That will be part of the discussions with Brightline West over the next several weeks," she said.

The failure to sell the bonds shows that deal sweeteners and juicy yields weren't enough to overcome investor concerns about a project that depends on the recovery of the pandemic-ravaged travel and entertainment industries and has few comparisons in the U.S.

While Fortress said the rail would ultimately go to Los Angeles, it would need to do multiple rounds of financing to do so. The venture planned to raise a total of \$6.38 billion in debt for the \$8.4 billion project. The bond issue would have financed construction for a 169-mile (272-kilometer) line connecting Las Vegas to a Southern California desert town called Apple Valley, 90 miles away from downtown.

Lead underwriter Morgan Stanley pitched corporate junk-bond buyers and overseas investors, as well as traditional municipal-bond managers, according to people familiar with the matter who asked not to be named as the talks were private. Prospective yields in October ranged from 7% to 7.5% depending on the call dates, with final maturity in 2050. That yield on a 30-year bond would have been about four times what the highest rated state and local governments pay, data compiled by Bloomberg show.

Bloomberg Markets

By Romy Varghese

October 31, 2020, 6:44 PM PDT Updated on October 31, 2020, 7:33 PM PDT

[SoCal to Vegas High-Speed Rail Project Hits the Brakes as Financing Falters.](#)

Plans to build a high-speed electric train between Los Angeles and Las Vegas have been sidetracked over the investor's inability to finance the project.

Fortress Investment Group announced Oct. 30 it has postponed its planned \$8-billion Brightline West project, which was expected to start construction this quarter.

Fortress and its subsidiary, Brightline Holdings, had been marketing \$3.2 billion in tax-free private activity bonds authorized by officials in California and Nevada. The amount investors sought was reduced to \$2.4 billion in recent weeks but still met a skeptical response in the bond market.

“Unfortunately, there is not a lot of liquidity in the market and a lot of economic uncertainty at this moment,” California Treasurer Fiona Ma told Bloomberg News over the weekend. “The project is postponed until market liquidity improves.”

California had given Brightline until Dec. 1 to put financing in place and will now shift its bonding authority toward affordable housing or other projects for the public good. Treasurer Ma said she did not know when Fortress would again seek bonding authority.

Private-activity bonds let states give third parties access to lower financing costs by issuing bonds free of federal income tax.

The Bond Buyer reported that lead underwriter Morgan Stanley offered the bonds in October with a yield running from 7% to 7.5%, depending on the call dates, with final maturity in 2050. That yield is about four times what top-rated municipal bonds pay.

A Brightline spokesman said the project would continue but did not offer details.

New Website Launched

The Florida-based company had recently launched a website that includes engineering and construction information for the Brightline West project.

Groundbreaking had been scheduled for late this year on what’s being called the High Desert Segment, a 190-mile stretch from Victorville, Calif., to a proposed station south of the Las Vegas Strip.

The planned route follows rights-of-way along Interstate 15, which links Las Vegas with its biggest tourism market, Southern California. The train will run through the I-15 median at some points and alongside the highway in other areas.

Completion of the entire project had been set for 2024. Brightline says that its train, which can operate at speeds up to 200 mph, will cut in half the normal six-hour drive between Los Angeles and Las Vegas.

The company says the project would create 40,000 construction jobs and 1,000 permanent jobs. It also says the all-electric train 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.

Brightline has been conducting geotechnical testing and exploratory boring near its planned Las Vegas station, according to the Nevada Dept. of Transportation, which issued advisories about possible traffic delays in the area. Ninyo & Moore and Terra Contracting are the contractors.

Brightline West is the third name for the project this year. It was briefly XpressWest, and before that it was branded as part of Virgin Trains until investor Richard Branson pulled out of the deal this summer.

Brightline operates a high-speed train line in Florida linking Fort Lauderdale, Miami and West Palm Beach, with plans underway to extend it to Orlando. Service is currently suspended because of the pandemic.

enr.com

by Doug Puppel

November 2, 2020

Fitch 2020 State Liability Report.

This week Fitch published the [2020 State Liability Report](#) - an annual survey of state direct debt and pension liabilities. State long-term liability burdens continued to decline in fiscal 2019, the last full year of the long economic expansion that followed the Great Recession.

Five states continue to carry elevated long-term liability burdens above 20% of personal income in fiscal 2019, including Illinois (at 27% of personal income), Connecticut, New Jersey, Hawaii and Alaska. For all of them, pensions remain the driver of elevated liabilities. Conversely, 37 states carried burdens below 10% of personal income, which Fitch views as low.

Fitch: Employment Growth Slows for U.S. States as COVID-19 Cases Rise

Fitch Ratings-New York-02 November 2020: The pace of job recovery continues to slow for most U.S. states with COVID-19 cases and hospitalization rates increasing throughout much of the country, according to Fitch Ratings in a new report.

“States by and large saw continued improvement in jobs recovery in September, although the pace has slowed since the summer, we expect the economic recovery to continue slowing this quarter.” said Senior Director Olu Sonola. Median jobs recovery (gain in non-farm payrolls) improved to 55% in September from 51% in August. Fitch considers most states are well-positioned to deal with resulting budget volatility at current rating levels, though economic contraction could compound revenue declines that erode states’ gap-closing abilities.

New York, Alaska, Illinois, Nevada, New Jersey and Kentucky all saw the steepest employment declines in the first three months of the pandemic and have seen slower employment recovery in recent months. Additionally, nine states lost jobs in September with Hawaii topping the list. Fitch downgraded Hawaii to ‘AA’ and revised the Rating Outlook to Stable last month, noting the outsized impact of the coronavirus pandemic on Hawaii’s economy and workforce, particularly its large leisure and hospitality sector.

Conversely, the employment picture improved dramatically for states like Massachusetts in September. Massachusetts’ official unemployment rate improved to 9.6% in September from 11.4% in August with the Fitch-adjusted unemployment rate also falling to 10.8% from 18.9%.

“Massachusetts has seen a notable uptick of hiring in the education and health services sector, which drives a large portion of their economy,” said Sonola.

Fitch’s ‘U.S. States Labor Markets Tracker’ is available at ‘www.fitchratings.com’

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TAX - LOUISIANA

[D90 Energy, LLC v. Jefferson Davis Parish Board of Review](#)

Supreme Court of Louisiana - October 20, 2020 - So.3d - 2020 WL 6145158 - 2020-00200 (La. 10/1/20)

Local tax board sought judicial review of decision by state tax commission, which reversed tax board decision affirming ad valorem property tax assessments against taxpayer and ordered reimbursement of taxes paid under protest.

The District Court affirmed the commission's decision. Tax board appealed. The Third Circuit Court of Appeal reversed and vacated. Taxpayer petitioned for writ of certiorari.

The Supreme Court held that:

- Tax Commission had the authority to receive supplementary evidence to aid in its valuation of taxpayer's wells;
- Tax Commission was not arbitrary and capricious by relying on the purchase price of wells to establish their fair market value;
- The specific provision for valuing oil and gas wells applied rather than the general provision applicable to "all property";
- A preponderance of the evidence existed to support Tax Commission's finding that sale of wells was a valid arms length transaction, and that the fair market value of the wells was \$235,000;
- Sufficient evidence existed to establish shut-in status of two gas wells, as required to entitle taxpayer to a 90 percent reduction; and
- Taxpayer was not required to make payment under protest to obtain review of ad valorem tax assessments.

The Tax Commission, on review of taxpayer's unsuccessful protest of ad valorem tax assessments on two gas wells and one salt water disposal well to the board of review, had the authority to receive supplementary evidence to aid in its valuation of the wells; regulation established by the Commission that governed appeals to the Commission expressly contemplated "new" evidence being presented to the Commission, and there was no accompanying prohibition against the receipt of new evidence.

Tax Commission was not arbitrary and capricious by relying on the purchase price of two gas wells and one salt water disposal well to establish their fair market value for purposes of calculating ad valorem tax; the Commission's regulation permitted it to consider the sale in determining fair market value.

On appeal from ad valorem tax appraisal on two gas wells and one salt water disposal well, the specific provision for valuing oil and gas wells applied rather than the general provision applicable to “all property.”

A preponderance of the evidence existed to support Tax Commission’s finding that sale of two gas wells and one salt water disposal well was a valid arms length transaction, and that the fair market value of the wells for purposes of calculating ad valorem taxes for three tax years was \$235,000; a \$100,000 cancelled check dated the same day as the sale supported that amount as the purchase price, which was further documented through e-mails, taxpayer’s president testified under oath that he paid \$100,000 for the property, that the property had been listed on the open market, and that the sale was fairly negotiated, and the plug and abandon cost of \$45,000 per well was established by uncontroverted testimony.

Sufficient evidence existed to establish shut-in status of two gas wells, as required to entitle tax payer to a 90 percent reduction in ad valorem taxation for the tax year in which the wells were shut-in; taxpayer presented testimony of a production gauger to prove the wells were shut in, and while the assessor claimed he relied on Department of Natural Resources report showing production from the wells for tax year in question, the production gauger explained that resulted from another company introducing gas into taxpayer’s pipeline, and not from taxpayer’s wells.

Taxpayer was not required to make payment under protest to obtain review of ad valorem tax assessments, and the assessor’s judicial challenge to the Tax Commission’s valuation did not create an obligation for taxpayer to protest a tax it agreed with.

TAX - NORTH DAKOTA

[RFM-TREI Jefferson Apartments, LLC v. Stark County Board of Commissioners](#)

Supreme Court of North Dakota - October 21, 2020 - N.W.2d - 2020 WL 6157021 - 2020 ND 204

Commercial property taxpayers appealed county board of commissioners decision denying their applications for tax abatements or refunds of taxes paid on apartment and hotel properties.

The District Court affirmed, and taxpayers appealed.

The Supreme Court held that:

- Board could not adopt assessment in light of assessor’s concession that the assessed value exceeded the market value of the properties, and
- Board did not violate taxpayers’ due process rights at hearing.

County board of commissioners could not adopt tax assessor’s assessment of apartment and hotel properties in light of assessor’s concession that the assessed value exceeded the market value of the properties; assessor conceded the properties could not have sold for the value they were assessed, such that their market value was less than their assessed value, and, as properties were commercial properties, their market value was synonymous with their true and full value.

County board of commissioners did not violate commercial taxpayers’ due process rights when it considered taxpayers’ information presented in written form and orally summarized by counsel and gave terse responses to their requests concerning the hearing format and time limitations, where

board held a special hearing and did not restrict the taxpayers' time to present their case or their manner of doing so.

[U.S. States Face Biggest Cash Crisis Since the Great Depression.](#)

The drop in tax revenue has led to a total shortfall expected in the hundreds of billions of dollars—greater than 2019's K-12 education budget for every state combined, or more than twice the amount spent that year on state roads and other transportation infrastructure.

Connecticut acted fast. Social distancing, lockdowns and testing slashed Covid-19 cases in the spring.

But when Comptroller Kevin Lembo opened an email from his budget director on April 15, it was clear the state's quick action to contain the pandemic hadn't insulated its finances.

"We hit the brakes so quickly on the economy that we went through the windshield," his deputy wrote.

[Continue reading.](#)

The Wall Street Journal

By Heather Gillers and Gunjan Banerji

Oct. 28, 2020 2:45 pm ET

[Pandemic's Impact on State Revenues Less Than Earlier Expected But Still Severe.](#)

The pandemic's impact on state revenues this spring was smaller than the historical record predicted. Nevertheless, states, localities, tribal nations, and U.S. territories like Puerto Rico still face large shortfalls for this fiscal year and the next in funding schools, health care, and other basic public services. They desperately need more federal aid to avoid more layoffs and other cuts that would further weaken the economy, increase hardship, and worsen racial and class inequities.

State and local revenues have fallen as the pandemic has forced businesses to close or scale back, costing millions of jobs. Sales taxes, a major revenue source for states and, to a lesser extent, localities, have fallen especially sharply. Income taxes — states' other primary revenue source — are also down, as are revenues from gasoline taxes and other lesser sources.

As a result, states and localities have furloughed or laid off 1.2 million workers to date, far more than the 750,000 that lost their jobs during the Great Recession.[1] They've also imposed spending cuts that diminish the reach and quality of public services. Georgia, for example, cut K-12 funding by nearly \$1 billion,[2] and California cut higher education by roughly the same amount.[3] Because many states are operating under budgets they know are unrealistic, more cuts — likely leading to more layoffs, tuition hikes, and reductions in public services — are coming unless the federal government steps up.[4]

[Continue reading.](#)

CBPP.ORG

BY MICHAEL LEACHMAN & ELIZABETH MCNICHOL

OCTOBER 30, 2020

[Reauthorize The Fed's Muni Lending Powers Or Risk Another Market Crisis.](#)

As Senate Republicans continue blocking state and city budget aid in a new stimulus package, progressive advocates want the Federal Reserve to be a much more active municipal lender. But the immediate risk to the municipal finance market—and thus to state and city budgets— is the scheduled expiration of the Municipal Liquidity Facility (MLF) at the end of 2020, which could threaten a repeat of this spring's market liquidity crisis. So the MLF needs to be extended now.

Remember the MLF was created in response to spring's sudden liquidity crisis in municipal finance. Investors pulled back from the muni market, forcing a selloff to cover their withdrawals. The cascading selloff in turn quickly drove up interest rates for billions of dollars in muni bonds approaching 10% in some cases, threatening a seizing-up of the entire market.

[Continue reading.](#)

Forbes

by Richard McGahey

Oct 30, 2020

[City And State Budget Squeeze Could Drag Down Muni Market, Putting New Pressure On The Fed.](#)

The failure to pass another Covid stimulus package because of Senate Republican resistance is increasing the budget squeeze on cities and states and raising cautions in the municipal bond market. Although Joe Biden and the Democrats want significant new spending aid, post-election gridlock could hurt cities, states, and the public finance market and also damage the economic recovery. That in turn will increase calls for aggressive new Federal Reserve powers and actions that could dramatically affect the muni market.

State and city revenues remain under water, and the sputtering economic recovery isn't likely to bail them out. According the Center on Budget and Policy Priorities, "state tax collections for March through July 2020 were 7.5% less than in the same months of 2019." And in September, Moody's MCO 0.0% said its improved baseline economic forecast would still mean that "the fiscal consequences...for states and local governments would be the worst since the Great Depression."

Chicago illustrates the problem. With revenues pummeled by the ongoing recession and no relief from a troubled state or a gridlocked federal government, the city plans to refinance existing debt at lower interest rates to generate short-term savings, and also stretching out the period for

repayment.

[Continue reading.](#)

Forbes

by Richard McGahey

Oct 27, 2020,06:00am EDT

These Bonds Could Benefit From a Democratic Sweep.

Hint: They tend to attract more buyers when taxes rise.

The results of the 2020 election could have a dramatic impact on the municipal bond market.

If Joe Biden wins the presidency and if the Democrats take control of the Senate, marginal tax rates for the wealthiest Americans could rise, increasing demand for munis, whose interest payments are exempt from federal income taxes and from state taxes for residents of the issuing state.

Under Biden's tax plan, individual taxpayers earning more than \$400,000 annually would be taxed at 39.6%, up from 37% currently, and subject to an additional 12.4% Social Security tax on wages split equally with their employer. If they itemize deductions (which Biden's plan caps at 28%) and live in a high-tax state like California, their total tax burden would be close to 60%, providing them a tax-equivalent yield of 5.625% on a California muni yielding 2.25%.

A Democratic sweep could also help shore up the finances of state and local governments, which would support muni credits. Congress then would be more likely to pass an economic aid package that would provide billions of dollars for state and local governments, which has been a key sticking point in recent stimulus negotiations between Republicans and Democrats. Those talks have so far failed to develop a compromise plan. Moreover, If the pandemic worsens, as it's expected to, the financial needs of state and local governments will increase.

James DiChiaro, senior portfolio manager at Insight Investment, said financial markets are now pricing in a higher probability of a Democratic sweep and probability of stimulus, which is why interest rates have been rising in the past week. The 10-year Treasury yield on Friday topped 0.85% in intraday trading on Friday, its level since June.

"Solid fund flows [for muni bonds] through the fall" also suggest that investors expect a blue wave in the upcoming election, said Rabasco. He explained that higher tax rates for wealthier individuals coupled with higher tax rates on corporations — Biden plans to raise corporate tax rates from 21% to 28% — also boost support for muni bonds.

Corporations, saddled with higher tax rates could also be attracted to the tax-exempt income that muni bonds provide. Banks and property and casualty insurers especially would tend to be attracted to munis, according to AllianceBernstein.

Even if there is no Democratic sweep in the upcoming election and the federal government remains divided, demand for munis will still be strong because the limits on state and local tax (SALT) deductions will remain. Those limits, set by the 2017 tax overhaul, "drove a lot of demand in the

marketplace,” said Rabasco, adding that there has been “solid fund flows” for munis through the fall.

He expects state and local governments will adopt austerity measures and debt financing if there is no strong federal support for their finances.

On the opposite end of the bond market outlook post election is the Commercial Mortgage Backed Securities (CMBS) market, which supports commercial real estate. “I would feel a lot more comfortable investing in CMBS if I was working out of an office building now,” said DiChiaro.

He said it was a “bit early to go heavily into CMBS right now” because of the impact the pandemic is having on commercial real estate though data warehouse credits have attractive values.

ThinkAdvisor

By Bernice Napach | October 26, 2020 at 11:28 AM

[Voters Will Consider \\$45 Billion of Bond Proposals in Election.](#)

- **School bonds make up more than half of 10 largest proposals**
- **LA \$7 billion bond would help post-Covid learning environment**

U.S. voters will decide on an estimated \$45 billion of bond sales this election as municipalities across the country seek funding for projects ranging from hospital improvements to school infrastructure.

More than half of the 10 largest ballot measures would fund school improvements, and if approved, some of that money would help districts grappling with educating students during a pandemic, including enhanced internet access and resources to prevent the spread of Covid-19. Other deals would pay for water and sewer projects, libraries and other infrastructure.

It’s the lowest amount of borrowing on U.S. ballots during a presidential year since 2012, according to preliminary data compiled by IHS Markit, which has updated its tally from a previous estimate that cited a higher amount of bond measures. The economic collapse caused by the pandemic stalled plans to borrow as municipalities and taxpayers face increasing financial uncertainty.

“Covid-19 by far has really thrown the global economy for a loop, let alone the municipal market,” said Christopher Brigati, head of municipal trading at Advisors Asset Management.

The borrowing slump comes at an unprecedented moment for state and local finances. Despite low interest rates, borrowers are contending with uncertainties over the outcome of the election and the prospect of credit downgrades as the coronavirus pandemic upends the economy.

The largest proposed borrowing, a \$7 billion bond for the Los Angeles Unified School District, would pay for an ongoing project to upgrade accessibility and earthquake safety, as well as “address facilities needs to adapt to a post-Covid-19 learning environment,” according to a press release.

The Dallas Independent School District in Texas is weighing \$3.7 billion of bonds to pay for enhanced internet access for students and teachers and facility renovations, including adding family resource centers in four historically redlined areas to address racial equity. A school district in Maricopa County, Arizona, is seeking approval of \$75 million in bonds in part to help prevent and fight the spread of Covid-19.

In Portland, Oregon, voters will decide on a \$1.2 billion offering that would upgrade the area's high schools without raising taxes. Jefferson High School, which predominantly serves students of color, is slated to receive the lion's share of the proceeds.

"Portland public schools historically has not served black students well," said Julia Brim-Edwards, bond campaign chair for Portland Public Schools. "We made a decision to prioritize Jefferson High School." It's the largest school bonds in the state's history, Brim-Edwards said.

The San Antonio Independent School District in Texas called for a \$1.3 billion bond on the ballot that would finance school renovations and technology. Taxpayers would not see a rate increase from the bond, according to district projections.

King County, Washington will seek approval for a \$1.7 billion bond that would fund improvements and increase critical surge capacity at Harborview Medical Center, a hospital facing rapid population growth that treated some of the first known Covid-19 cases in the U.S.

Fairfax County, Virginia is asking voters to approve four bonds, including \$160 million that would be used for the county's contribution to Metro's capital improvement program. Funds would be used to buy new railcars and buses and construct a new bus garage.

California and New Mexico are the only ballots with state bond questions. California has a \$5.5 billion measure that would authorize borrowing for stem cell and other medical research, and New Mexico collectively has about \$200 million in measures that would fund schools, senior facilities and library improvements. California is also the largest issuer, with about twice as much bonding on the ballot as Texas, the second largest.

Bloomberg Politics

By Nic Querolo

October 30, 2020, 10:39 AM PDT

[Lawsuits Over Protest Brutality Pile Up, Adding to Cities' Police Costs.](#)

An ACLU case against New York City is the latest to allege that cities responded to demonstrations with brutality.

U.S. cities are facing a growing number of lawsuits alleging excessive force against protesters this year.

The New York branch of the American Civil Liberties Union and the Legal Aid Society on Monday sued New York City, Mayor Bill de Blasio and police leadership and officers over their response to summer protests sparked by the police killing of George Floyd. The suit claims the New York City Police Department violated protesters' First Amendment rights with brutal force.

This marks the latest such allegation against a city government, joining cases in Omaha, Nebraska; Los Angeles; New York; and Minneapolis, the focal point of the protests. The growing list shows that departments are not fixing the issues that land them in court, said Joanna Schwartz, a professor at the UCLA School of Law who specializes in police accountability. The costs of such claims add up, forcing cities to spend more on police.

This week's lawsuit alleges the NYPD unnecessarily used tools like batons and pepper spray on demonstrators and deployed tactics like kettling, in which police surround and trap a group in a location. These tactics resulted in injuries, including a broken arm for one of the 11 plaintiffs, according to the suit, which also alleges false imprisonment.

"What everybody saw in the aftermath of George Floyd's murder was egregious police misconduct and violations of protesters' rights across the country but particularly in New York City," said Daniel Lambright, an ACLU attorney working on the case. "We don't think there was a 'bad apple' problem. We think these were part of policies and practices endorsed by the mayor and the commissioner."

The mayor's office declined to comment further on the lawsuit, but de Blasio addressed it in part during a Monday news conference. "From what I've heard of the lawsuit's allegation, it doesn't sound right at all to me," he said. "You know, there's been a conscious effort for seven years now to change the relationship between the NYPD and communities."

Schwartz, the law professor, said it would be in cities' economic interest to address the underlying problems that lead to conflict with protesters and allegations of brutality, rather than spending resources on settlements and court battles.

The coronavirus pandemic has left state and local governments facing a projected \$467 billion decline in revenue between 2020 and 2022, according to the Brookings Institution. At the same time, governments across the U.S. are facing questions about public safety spending; one rallying cry among protesters this year was to "defund police."

In some localities, public safety already exceeds a third of general fund spending. Louisville, Kentucky, where Breonna Taylor was killed by police in March, spends 29% of its general fund budget on police. In Minnesota and Omaha, it's 35% and 36%, respectively. New York City spends nearly 6% of its vast general fund on police, which comes out to more than \$5 billion. Misconduct payouts are a further way departments pull on city purse strings.

Moody's Investors Service, the credit ratings agency, said reform efforts that lead to fewer legal settlements are good for local governments' financial standing. These costs aren't always crippling for municipalities, but they can crowd out other vital spending. Chicago paid \$757 million in settlements between 2014 and 2018, New York City paid \$220 million in fiscal 2019, and Louisville recently paid \$12 million to Taylor's family.

"There are simple economic reasons to try to learn from these suits," Schwartz said. "It is a really distressing sign of our times that police departments are sometimes responding to what has been an unprecedented outcry against police misconduct with more misconduct, and sometimes even more blatant misconduct and excessive force than we've seen in the past."

Bloomberg CityLab

By Fola Akinnibi

October 28, 2020, 9:08 AM PDT

[Tlaib, Ocasio-Cortez Offer Bill to Create National Public Banking System.](#)

Democratic Reps. Alexandria Ocasio-Cortez (N.Y.) and Rashida Tlaib (Mich.) on Friday introduced a

bill to create a federally chartered and supported public banking system.

Called the Public Banking Act, the bill would develop a system through which the Federal Reserve System and Treasury Department would recognize, offer grants and open credit facilities for nonprofit banks. These banks would be intended to compete with the commercial banking industry and would be barred from charging fees on checking or savings accounts, requiring minimum balances and levying interest rates of more than 15 percent.

Tlaib and Ocasio-Cortez said the bill is intended to expand access to financial services in areas where a large portion of the population is unable to afford conventional banking services. Nearly 30 percent of those without bank accounts cited an inability to meet minimum balance requirements as the main reason they did not use a bank, according to a June 2019 survey conducted by the Federal Deposit Insurance Corp., and nearly 49 percent said it was at least a contributing factor.

“From overdraft fees to charging for having a checking account period, Wall Street-run banks put key financial services out of reach for many of my residents who are struggling to make ends meet,” Tlaib said in a statement

“It’s long past time to open doors for people who have been systematically shut out and provide a better option for those grappling with the costs of simply trying to participate in an economy they have every right to—but has been rigged against them.”

Tlaib and Ocasio-Cortez said the bill is also intended to give local governments, community development projects and small businesses easier access to loans and federal financial relief programs as they grapple with the damage wrought by the coronavirus pandemic.

“The creation of public banks will also facilitate the use of public resources to construct a myriad of public goods including affordable housing and local renewable energy projects,” Ocasio-Cortez said in a statement. “Public banks empower states and municipalities to establish new channels of public investment to help solve systemic crises.”

The bill from Tlaib and Ocasio-Cortez, both members of the House Financial Services Committee, is the latest push from progressive Democrats to create federally funded and supported alternatives to the financial sector.

House Financial Services Committee Chairwoman Maxine Waters (D-Calif.) in June introduced a bill that would order banks within the Federal Reserve System to offer “FedAccounts” with similar terms as specified in the Public Banking Act.

A task force set up by Democratic presidential nominee Joe Biden and Sen. Bernie Sanders (I-Vt.) in July also called for the creation of a government-run banking system set up through the Federal Reserve and U.S. Postal Service.

THE HILL

BY SYLVAN LANE - 10/30/20

[**Shorten Up On Duration With High-Yield Munis.**](#)

Summary

- Rising long-end rates are making some income investors nervous about the impact of growing deficits and inflationary dynamics on their portfolios.
- Short-duration high-yield municipal bonds provide an attractive combination of yield, historical drawdown dynamics and a muted sensitivity to rising rates.
- Within the sector we like NVHAX due to its modest leverage use, attractive yield and strong historical returns.

[Continue reading.](#)

Seeking Alpha

Oct. 28, 2020

[**Assessing the Impact of COVID-19 on the Municipal Debt Market.**](#)

The municipal bond market was in great shape prior to the COVID-19 outbreak. After the passage of the Tax Cuts and Jobs Act in 2017, the combination of strong investor demand for yield and a limited supply of tax-exempt issues led to a compression in quality and sector spreads. Of course, the COVID-19 outbreak led to a sudden disruption of financial markets, including muni markets.

COVID-19's Impact on Munis

The U.S. COVID-19 outbreak in March sparked a rapid sell-off across financial assets. In the municipal bond market, \$40 billion in redemptions in just three weeks caused a severe liquidity crisis, particularly as leveraged funds were forced to sell. Quality and sector spreads also widened as investors sought out safe-haven assets, such as general obligation bonds.

[Continue reading.](#)

dividend.com

Oct 28, 2020

[**S&P ESG U.S. Public Finance Report Card: Tri-State Region Governments And Not-For-Profit Enterprises**](#)

Key Takeaways

- E: A portion of the region is exposed to elevated environmental risks when compared to other regions in the U.S., depending on an entity's proximity to the Atlantic Ocean. Natural conditions, such as severe weather events like Superstorm Sandy, and longer-term issues resulting from sea level rise are more prevalent risks to credit quality for some entities without implementation of adaptation measures.
- S: The Tri-State area was once the epicenter of the COVID-19 pandemic in the U.S. and continues to reel from health and safety social risks related to reducing the virus transmission. However, outside of health and safety social risks, we view declining population and affordability concerns as elevated long-term social risks affecting the region.

- G: For government entities, we view the statutory framework as we define it in our criteria as a governance opportunity for entities in New York, New Jersey, and Connecticut as each provide oversight for distressed issuers, which we believe supports credit quality in the Tri-State.

[Continue reading.](#)

28 Oct, 2020

[SEC Proposes Exemptive Relief From Broker Registration for Finders for Small Companies.](#)

On October 7, 2020, the Securities and Exchange Commission (SEC) proposed to address long-standing questions regarding the applicability of the broker registration requirements to finders for small and emerging businesses.¹ Identifying potential investors is one of the most difficult challenges for small businesses trying to raise capital, and finders can play an important role in facilitating small-business capital formation. However, regulatory uncertainty regarding the broker registration requirements for finders has hampered the ability of small companies to make use of finders' services. Responding to the many calls for the SEC to address this lack of clarity, the SEC proposes to grant exemptive relief to permit natural persons to engage in limited activities on behalf of issuers (Finders) without registering as brokers under Section 15 of the Securities Exchange Act of 1934 (Exchange Act). The proposed exemption is intended to provide issuers with greater access to investment capital subject to appropriate investor protections, and to establish clear lanes for both registered broker activity and limited activity by Finders who would be exempt from registration. The SEC has requested comment on the proposed exemption by November 12, 2020.

Proposed Exemptions for Tier I Finders and Tier II Finders

The SEC proposes to exempt from broker registration two classes of Finders: Tier I Finders and Tier II Finders. The proposed exemption for both Tier I and Tier II Finders would be available only when the following seven conditions are met:

- The issuer is not required to file reports under Section 13 or Section 15(d) of the Exchange Act; The issuer is seeking to conduct the securities offering in reliance on an applicable exemption from registration under the Securities Act of 1933 (Securities Act);
- The Finder does not engage in general solicitation;
- The potential investor is an "accredited investor" as defined in Rule 501 of Regulation D, or the Finder has a reasonable belief that the potential investor is an "accredited investor";
- The Finder provides services pursuant to a written agreement with the issuer that includes a description of the services provided and associated compensation;
- The Finder is not an associated person of a broker-dealer as defined under Section 3(a)(18) of the Exchange Act; and
- The Finder is not subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Exchange Act, at the time of his or her participation.

Tier I Finders

A Tier I Finder would be defined as a Finder who meets the relevant conditions above and whose activity is limited to providing contact information of potential investors with only one capital-raising transaction by a single issuer within a 12-month period,² provided the Tier I Finder does not have

any contact with the potential investors about the issuer. The contact information may include, among other things, name, telephone number, email address and social media information. Limiting the exemption to this activity is intended to narrow the role of the Tier I Finder to preclude the participation in continuous or multiple sales of securities by persons who are not subject to broker-dealer registration. A Tier I Finder who complies with all the conditions of the exemption may receive transaction-based compensation for the limited broker-dealer services described above without being required to register as a broker under Section 15(a) of the Exchange Act.

Tier II Finders

The SEC also proposes an exemption for Tier II Finders that would permit Tier II Finders to engage in additional solicitation-related activities beyond those permitted for Tier I Finders. A Tier II Finder is defined as a Finder who meets the relevant conditions above and who engages in solicitation-related activities on behalf of an issuer that are limited to (i) identifying, screening and contacting potential investors; (ii) distributing issuer offering materials to investors; (iii) discussing issuer information included in any offering materials, provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment; and (iv) arranging or participating in meetings with the issuer and investor.³ The SEC generally views solicitation as any affirmative effort to induce or attempt to induce a securities transaction and broadly views these activities of Tier II Finders to constitute solicitation. The SEC states that limiting the proposed exemption to these specified activities associated with solicitation, along with the additional conditions set forth below, is intended to narrow the role of the Tier II Finder to support the proposed exemption.

A Tier II Finder wishing to rely on the proposed exemption also would need to satisfy certain disclosure requirements and other conditions.⁴ First, the Tier II Finder would need to provide a potential investor, prior to or at the time of the solicitation, disclosures that include:

- the name of the Tier II Finder;
- the name of the issuer;
- the description of the relationship between the Tier II Finder and the issuer, including any affiliation;
- a statement that the Tier II Finder will be compensated for his or her solicitation activities by the issuer and a description of the terms of such compensation arrangement;
- any material conflicts of interest resulting from the arrangement or relationship between the Tier II Finder and the issuer; and
- an affirmative statement that the Tier II Finder is acting as an agent of the issuer, is not acting as an associated person of a broker-dealer and is not undertaking a role to act in the investor's best interest.

The SEC proposes to allow a Tier II Finder to provide the above disclosures orally, provided that the oral disclosure is supplemented by written disclosure no later than the time of any related investment in the issuer's securities. The written disclosures can be provided through either paper or electronic means.

Second, the Tier II Finder also must obtain from the investor, prior to or at the time of any investment in the issuer's securities, a dated written acknowledgment of receipt of the Tier II Finder's required disclosures. The written acknowledgment may be provided through either paper or electronic means.

A Tier II Finder who complies with all the conditions of the proposed exemption may receive transaction-based compensation for services provided in connection with the activities described above without being required to register as a broker under Section 15(a) of the Exchange Act.

Prohibited Activities for Finders

The proposed exemption would apply only with respect to the defined activities for each tier of Finder and is limited to activities solely in connection with primary offerings. A Finder could not rely on this proposed exemption to engage in broker activity beyond the scope of the proposed exemption. For example, a Finder could not:

- be involved in structuring the transaction or negotiating the terms of the offering;
- handle funds or securities or bind the issuer or investor;
- participate in the preparation of any sales materials;
- perform any independent analysis of the sale;
- engage in any “due diligence” activities;
- assist or provide financing for such purchases; and
- provide advice as to the valuation or financial advisability of the investment.

Safe Harbor

The proposed exemption would provide a nonexclusive safe harbor from broker registration for Tier I and Tier II Finders. No presumption would arise that a person has violated Section 15(a) of the Exchange Act if such person is not within the terms of the proposed exemption. Consistent with how questions under Section 15(a) have been evaluated, whether a person is acting as a “broker” and in particular, whether he or she is “engaged in the business” of effecting securities transactions for the account of others will depend on the facts and circumstances of the particular matter. Accordingly, engaging in some of the limited activities falling within the terms of the proposed exemption should not be considered per se to require registration as a broker-dealer if all the requirements of the exemption are not met.

Other Applicable Laws

The proposed exemption would not affect a Finder’s obligation to continue to comply with all other applicable laws, including the antifraud provisions of the Securities Act and the Exchange Act, such as the obligations under Section 10(b) and Rule 10b-5 under the Exchange Act, and state law. In addition, the proposed exemption is not intended to affect the rights of the SEC or any other party to enforce compliance with other applicable law, or the available remedies for violations of the law. Further, regardless of whether or not a Finder complies with this exemption, that Finder may need to consider whether he or she is acting as another regulated entity, such as an investment adviser or a municipal advisor. An exemption from the obligation to register as a broker-dealer does not insulate a person from the registration requirements of the Investment Advisers Act of 1940 if such person is acting as an investment adviser.

Request for Comment

The SEC posed 45 specific questions regarding the proposed exemption. In addition to requests for comments on the various aspects of the proposal, the SEC inquired more broadly as to whether there are other areas in which the SEC should provide guidance regarding the applicability of broker-dealer registration requirements to other types of limited-purpose broker-dealers. The SEC also asked whether any staff no-action letters should or should not be withdrawn if the proposed exemption is adopted. Moreover, the SEC asked whether the proposed exemption would have a competitive impact on registered broker-dealers.

Footnotes

1. Securities Exchange Act Release No. 90112 (Oct. 7, 2020), 85 Fed. Reg. 64542 (Oct. 13, 2020) (available at <https://www.sec.gov/rules/exorders/2020/34-90112.pdf>).
2. The SEC noted that this requirement is similar to the limitation included in Rule 3a4-1 for sales activities by associated persons of an issuer. See Rule 3a4-1(a)(4)(ii)(C) under the Exchange Act (stating that as a condition of the rule, subject to limited exceptions, the associated person of an issuer cannot participate in selling and offering of securities for any issuer more than once every 12 months).
3. A Tier II Finder is not subject to the Tier I Finder's limitation of participating in only one capital-raising transaction by a single issuer in a 12-month period.
4. The disclosure requirements and conditions applicable to Tier II Finders differ from the requirements applicable to solicitors under the SEC's proposed amendments to Rule 206(4)-3 under the Investment Advisers Act of 1940, the Cash Solicitation Rule. See Investment Advisers Act Release No. 5407 (Nov. 4, 2019), 84 Fed. Reg. 67518 (Dec. 20, 2019). The SEC stated that these differences reflect the particular facts and circumstances surrounding the proposed permitted activities for Finders and solicitors, and the characteristics of the applicable regulatory regimes, notably that a solicitor would solicit for an investment adviser and would be subject to oversight by such investment adviser, while a Finder would solicit for an issuer and therefore would not be subject to such oversight.

Wilmer Cutler Pickering Hale and Dorr LLP - Andre E. Owens and Cherie Weldon

October 28, 2020

[Goldman, Citi, BofA, Others to Face Muni Bond Price-Fixing Suit.](#)

- **Accuses banks of illegal coordination about price, inventory**
- **Adequately alleges collusion through 'thinly coded questions'**

Bank of America, Citigroup, JPMorgan, Goldman Sachs, and other top banks must face claims that they conspired to fix the price of "variable rate demand obligations," a type of municipal infrastructure bond that can be redeemed at short-term interest rates that are reset weekly, a federal judge in Manhattan ruled Monday.

"Prior to resetting the VRDO interest rates, the banks routinely" shared "their base rates, inventory levels, and planned rate changes," using "thinly coded questions" to coordinate and "ensure that none of them broke ranks," Judge Jesse M. Furman wrote.

Those exchanges reflect "the kinds of forward-looking, price-bearing communications that can support an inference that there was a conspiracy to fix prices," the judge said.

In addition to BofA, Citi, JPMorgan, and Goldman, the proposed class action targets affiliates of Barclays, Morgan Stanley, the Royal Bank of Canada, and Wells Fargo. It's consolidated in the U.S. District Court for the Southern District of New York, where it's being led by the city governments of Philadelphia and Baltimore.

The lawsuit accuses the banks of colluding with one another in an effort to get higher rates for the VRDO bonds than they pledged to in their "remarketing" agreements with the cities that issued them.

The contracts required the banks to set the lowest interest rate that the market would bear. Their scheme was aimed at letting them fix higher rates without being replaced by the issuing cities, which would have found cheaper remarketers in the absence of collusion, the suit says.

The illegal coordination allegedly came to light after the Securities and Exchange Commission and the Justice Department launched investigations in 2015 and 2016, respectively, based on a whistleblower complaint.

The case is [*City of Philadelphia v. Bank of Am. Corp.*](#), S.D.N.Y., No. 19-cv-2667, 11/2/20.

Bloomberg Law

Nov. 2, 2020

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Rob Tricchinelli at rtricchinelli@bloomberglaw.com

[Eight Big Banks Must Face U.S. Cities' Allegations of Municipal Bond Collusion.](#)

NEW YORK (Reuters) – A federal judge on Monday said Philadelphia and Baltimore may sue eight big banks for allegedly conspiring to force state and local governments to pay inflated interest rates on a popular type of tax-exempt municipal bond.

U.S. District Judge Jesse Furman in Manhattan said the cities may pursue antitrust claims in the proposed class action over the banks' marketing of variable-rate demand obligations, once a more than \$400 billion market, from 2008 to 2016.

Philadelphia and Baltimore said the collusion reduced available funding for hospitals, power and water supplies, schools, transportation and other essential municipal services.

The defendants included affiliates of Bank of America Corp, Barclays Plc, Citigroup Inc, Goldman Sachs Group Inc, JPMorgan Chase & Co, Morgan Stanley, Royal Bank of Canada and Wells Fargo & Co.

VRDOs are long-term bonds with short-term interest rates that typically reset weekly. Investors may redeem the bonds early, and banks must remarket those bonds to other investors at the lowest possible rates.

Philadelphia and Baltimore, which issued a respective \$1.67 billion and \$261 million of VRDOs, accused the banks of sharing proprietary information about bond inventories and planned rate changes.

They said this dissuaded redemptions, and enabled the banks to charge hundreds of millions of dollars in remarketing and service fees for "effectively doing nothing."

In his 34-page decision, Furman said the cities offered "reason to believe that defendants stood to gain by participating in the rate-fixing scheme and that the scheme was possible only with defendants' coordinated efforts."

Furman also said six of the banks must face breach of contract claims. He dismissed all claims of unjust enrichment.

Spokespeople for the banks declined to comment or had no immediate comment. Lawyers for the plaintiffs had no immediate comment.

The VRDO market exceeded \$400 billion in 2009 but has shrunk. S&P Global Ratings recently rated \$144.9 billion of the securities.

The case is Philadelphia et al v Bank of America Corp et al, U.S. District Court, Southern District of New York, No. 19-01608.

By Jonathan Stempel

NOVEMBER 2, 2020

Reporting by Jonathan Stempel in New York; Editing by Marguerita Choy

[**The 2020 Election and Opportunity Zones, with Mike Novogradac and John Sciarretti.**](#)

What impact will the 2020 election have on the Opportunity Zones incentive? Expect major changes if Joe Biden is elected, and potential expansion of the program if Donald Trump wins reelection. The balance of power in the Senate should have an impact as well.

Mike Novogradac is the managing partner of Novogradac, a top 50 accounting firm founded in 1989. John Sciarretti is chair of the Novogradac Opportunity Zones conferences and leader of the Novogradac Opportunity Zones Working Group.

[CONTINUE READING »](#)

[**MSRB Seeks Volunteers for Board Advisory Groups.**](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today announced that it is seeking volunteers for two [Board advisory groups](#) for FY 2021: the Compliance Advisory Group (CAG) and the Municipal Fund Securities Advisory Group (MFSAG). In addition, the MSRB is requesting input on potential topics for these advisory groups to take up in FY 2021.

“A particularly impactful way municipal market stakeholders can engage with the MSRB is by serving on one of the Board’s advisory groups,” said Seema Mohanty, Chair of the Board’s Stakeholder Engagement Committee. “For several years, the Board has benefited from the diverse market perspectives and expertise of the members of our advisory groups, and we encourage market stakeholders to volunteer to serve on one of the two FY 2021 groups.”

• Compliance Advisory Group

The MSRB originally established CAG in FY 2018 to provide additional outside expertise and input to the Board to help inform the organization’s long-term strategic goal to facilitate industry understanding of and compliance with MSRB rules.

- **Municipal Fund Securities Advisory Group**

In FY 2019, the MSRB established MFSAG to provide input to the Board on municipal market rules, practices, transparency, and education related to 529 savings plans and Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) programs.

The MSRB is now seeking qualified individuals from around the country representing diverse market perspectives and organizations to volunteer for its FY 2021 CAG and MFSAG. The MSRB will accept volunteer submissions through December 15, 2020. In addition, interested individuals are invited to recommend topics they believe the Board's advisory groups should consider addressing in FY 2021.

[Learn more about volunteering for FY 2021 CAG and MFSAG and suggesting topics.](#)

Date: October 23, 2020

Contact: Leah Szarek, Interim Chief External Relations Officer
202-838-1500
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'City Hall' Review: An Inspiring Display of Municipal Bonds.

Set in Boston, Frederick Wiseman's documentary epic celebrates the ideals of civic governance and the realities of urban life.

There's a puzzlement worth pondering in Frederick Wiseman's "City Hall," the latest in a remarkable string of 43 documentary features that began with his "Titicut Follies" in 1967. (This one is streaming as a Film Forum release in virtual cinema, and will soon share online revenues with other theaters around the country.)

Why would a serious filmmaker, and a lawyer by training, open a film focused on the workings of city government—the city in question being Boston—with a call-center operator taking a report of a stray dog walking on a roadway, and close his leisurely epic 275 minutes later with another operator intoning earnestly over the end credits: "I have down that you're reporting there is something wrong with the hawk's eyes, and that the hawk isn't acting normal, and it is feeding on a pigeon on the street rather than flying away with its food, and there are a lot of people around the hawk, but the hawk didn't seem to be able to fly away"? Is Mr. Wiseman, who can be sly on occasion, trying to tell us that the city is going to the dogs, or that it's for the birds?

Not likely. His film, narration-free as always, constitutes a love letter to civic governance, and the notion of democracy, at a time when public discourse seethes with scorn for urban life. It is also a celebration, simultaneously clear-eyed and optimistic, of what Boston's government, under its mayor, Martin J. Walsh, has been trying to achieve in a city that's endured more than its share of racial turmoil in the recent past. There is slyness, for sure, but also sweetness, in using people's concerns for animals as bookends for a documentary that tracks the city's everyday life in minute and enthralling detail. (Completed before the pandemic, the film also serves as a bittersweet reminder of how vital urban life can be.)

You can imagine all those people standing over the troubled hawk. But you can watch the ubiquitous mayor and scores of officials and workers doing their jobs with visible diligence, while citizens all across the venerable city meet, schmooze, discuss, plan, argue, negotiate, marry, speechify (often eloquently), rejoice (for the Red Sox, of course), plead for relief from parking tickets and demand

respect, as well as get it, from their chosen representatives.

“Respectful” is a word heard often in the film. It’s part of ritual exhortations from the mayor and his staff, the thing they know they all need to be in this angry moment of American history if they’re going to keep, or regain, their constituents’ trust. “Diversity” and “inclusiveness” come up a lot too, illustrated by elaborate efforts at outreach. The film renders no judgments on the city’s success, yet you can’t help but be bedazzled by the polyglot complexity of the place—a poor section of Dorchester that’s 42% Cape Verdean, a Chinese-American festival where a woman in a cheongsam plucks a pipa while she sings “Red River Valley.” And you marvel that the city holds together as well as it does from day to day. (Unlike local TV news, “City Hall” keeps any and all street violence off-screen. The conflicts here play out peacefully, if often fervently, in conference rooms and community centers.)

When my daughter was little, one of the books I loved reading with her was Richard Scarry’s “What Do People Do All Day?” All those workers doing all that work in Busytown! “City Hall” conveys a similar sense of intense industriousness, even if the workers don’t have cute animal heads.

A clerk listens, really listens, to a first-time father, as he describes, at great and endearing length, how his car happened to be parked in front of a fire hydrant in the middle of the night. (Does she still make him pay the ticket? Watch the film to find out.) A youngish Black health department inspector understands that he’s also being pressed into service as a therapist for an elderly white resident with a rodent-infestation problem. In addition to the rat that’s taken up residence in a greasy stove, the poor man is beset by his own failing health, the sad state of his house, and his brother’s effort to evict him. “My spirit is broken,” he says, to which the health department guy replies quietly, with feeling, “I hear you.”

If I’ve given the impression that “City Hall” portrays Boston as a shining, happy city on Beacon Hill, that is hardly the case. No city has been exempt from the nation’s upheavals, even before the pandemic struck. But Mr. Wiseman’s film shows us, without telling us, that American cities continue to be laboratories for rebirth and innovation. The spirit of this one is embodied in its mayor, Marty Walsh. A Democrat and unabashed liberal, he’s also a cancer survivor, a recovering alcoholic, and a virtuoso storyteller with a gift, common to great pols of the past, for connecting to everyone who crosses his path. “If you see me on the street,” he says at one meeting, “grab me and tell me what the problem is.” That’s what people do, and it’s a pleasure to watch them do it.

The Wall Street Journal

By Joe Morgenstern

Oct. 29, 2020 4:13 pm ET

[Understanding Opportunity Zone Investments in Multifamily Projects.](#)

Baker Tilly’s podcast series specifically for professionals in the multifamily housing industry.

On this episode, multifamily housing leaders and hosts, Don Bernards and Garrick Gibson, speak to Executive Vice President of Baker Tilly Capital, Mike Fitzpatrick, on Opportunity Zones (OZ). They discuss the types of projects that are attractive to investors in the current market, the general underwriting benchmarks sponsors should be aware of, and how the election is impacting OZ equity.

If you have large capital gains, Mike will share some options for getting into an investment and how you can factor the value of OZ benefits into your investment analysis.

[Listen to the Podcast.](#)

[Puerto Rico Judge Rejects Request for Probe into Allegedly Improper Bond Trades.](#)

The judge overseeing Puerto Rico's debt restructuring process has rejected a bond insurer's request for an investigation into what it said were potentially improper bond trades based on information obtained during confidential mediation sessions.

During a telephonic hearing on Wednesday, U.S. District Judge Laura Taylor Swain, who sits on both Manhattan and Puerto Rico federal courts, called bond insurer National Public Finance Guarantee Corp's suggestion of wrongdoing by bondholders "sensational and largely speculative." Her ruling comes as the commonwealth and the federally appointed oversight board guiding the restructuring, which has been proceeding in court for more than three years, attempt to continue negotiations with creditors on a plan of debt adjustment.

To read the full story on Westlaw Today, click here: bit.ly/35Lg8x5

REUTERS

By Maria Chutchian

OCTOBER 28, 2020

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- **Ed. Note:** In lieu of any substantive public finance news, [Happy Decorative Gourd Season!](#) [Weapons-grade profanity alert. You've been warned.]
 - [Bond Insurance Returns to the Muni Market in a Big Way.](#)
 - [We Heard You Missed Us - We're Back! To Talk about Business Days: Squire Patton Boggs](#)
 - [GASB Hosting CPE Webinars on the Exposure Draft, Financial Reporting Model Improvements.](#)
 - [IRS Releases Guidance on the Transition From LIBOR: Ballard Spahr](#)
 - And finally, The Constitutional Constraints On Contractual Obligations Are Coming From Inside The Municipality! is brought to us this week by [Farmers Bank & Trust v. Homestead Community Development](#), in which the opinion begins with, "When you do business with a city in Kansas, you must be cautious.... This case is an example of that peril." Good lord! Perfectly appropriate for the spooky season, but otherwise maybe go ahead and stick with, "The Sunflower State," Kansas.

BALLOT INITIATIVES - CALIFORNIA

[Denny v. Arntz](#)

Court of Appeal, First District, Division 2, California - September 17, 2020 - Cal.Rptr.3d - 2020 WL 6059671 - 20 Cal. Daily Op. Serv. 10,653

Plaintiff brought action against city officials seeking to set aside a passed proposition to fund repairs and improvements to a seawall. The Superior Court sustained officials' demurrer and dismissed without leave to amend. Plaintiff appealed.

The Court of Appeal held that:

- Plaintiff failed to state any statutory grounds for relief, as required to bring postelection contest;
- Demurrer was procedurally proper; and
- Plaintiff was not entitled to leave to amend complaint.

Plaintiff failed to state any statutory grounds for relief, as required to bring postelection contest to city proposition to fund repairs and improvements to a seawall; even though plaintiff labeled his claim as offense against elective franchise, complaint was actually challenge to sufficiency and impartiality of proposition's digest and ballot materials, which was not listed as grounds for postelection challenge, plaintiff did not bring action against candidate as statute required, and plaintiff did not avail himself of preelection procedures for challenging proposition's ballot materials or digest.

Demurrer to plaintiff's postelection contest to city proposition to fund repairs and improvements to a seawall was procedurally proper, despite contention that city officials were required to file an affidavit to respond to complaint; plaintiff did not properly allege grounds for postelection contest, and there was no incompatibility between demurrer and election contest, as election statute authorized dismissal on same standards as demurrer.

Plaintiff was not entitled to leave to amend complaint, which failed to state statutorily allowed claim for a postelection challenge to a city proposition to fund repairs and improvements to a seawall; proposed amendment was to add ground for relief that measure purported to impose ad valorem taxes for bonded indebtedness for purposes other than acquisition or improvement of real property, and plaintiff did not demonstrate how amendment would have allowed him to state cause of action.

CONTRACTS - KANSAS

[Farmers Bank & Trust v. Homestead Community Development](#)

Court of Appeals of Kansas - October 2, 2020 - P.3d - 2020 WL 5849345

In 2007, Farmers Bank lent \$600,000 to Homestead Community Development, Inc. to remodel a property called the Bartell House in downtown Junction City. Terry Heldstab, who was Mayor at the time, signed a letter of guaranty to Farmers.

When Homestead failed to pay the loan, Farmers sued Homestead on its note and foreclosed its mortgage. The court granted Farmers judgment when Homestead failed to pay the loan. Farmers then turned to the City and sought to enforce the guaranty. But the City maintained that the guaranty was void and unenforceable.

The District Court ruled in favor of City and City appealed.

The Court of Appeals upheld the ruling, finding that:

- The guaranty violated the state Cash Basis Law, which requires that it shall be unlawful for the governing body of any municipality to create any indebtedness in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose. To comply with this law, the City needed to set out in its budget how much it anticipated to spend on the guaranty. In other words, the budget must be itemized and classified so that revenues are earmarked for this particular purpose;
- The guaranty violated the state Budget Law, which provides that it shall be unlawful for the governing body of any municipality to create an indebtedness in any manner or in any fund after the total indebtedness created against such fund shall equal the total amount of the adopted budget of expenditures for such fund for that budget year.
- The City not only needed to have enough funds available in its treasury, it needed to designate those funds to pay the guaranty so the funds would not be used for another purpose.

IMMUNITY - MAINE

McDonald v. City of Portland

Supreme Judicial Court of Maine - October 13, 2020 - A.3d - 2020 WL 6039159 - 2020 ME 119

Pedestrian who slipped and fell on plaza immediately outside police department headquarters brought personal injury action against city for its alleged negligence in maintaining the area.

The Superior Court denied city's motion for summary judgment on immunity grounds, and city appealed.

The Supreme Judicial Court held that:

- Plaza immediately outside police department headquarters where pedestrian slipped and fell on ice was an "appurtenance" to public building, under the "public building" exception to the Maine Tort Claims Act (MTCA), and
- City's failure to treat icy conditions of a plaza appurtenant to public building could be considered a "negligent act[] or omission," in the "maintenance" of the plaza, such as would subject city to liability for fall.

Plaza immediately outside police department headquarters where pedestrian slipped and fell on ice was an "appurtenance" to public building, and not an excluded sidewalk or parking lot, the negligent maintenance of which by municipality could subject it to liability under the "public building" exception to the Maine Tort Claims Act (MTCA); it did not matter that municipality allowed staff to park bicycles and motorcycles in limited area of the plaza, since to hold that government entity could defeat the "public building" exception to immunity by simply allowing staff to park motorcycles or bicycles on what would otherwise be an appurtenance would be absurd or illogical.

City's failure to treat icy conditions of a plaza appurtenant to public building could be considered a "negligent act[] or omission," in the "maintenance" of the plaza, such as would subject city to liability for fall that occurred as result of such negligence under the "public building" exception to the Maine Tort Claims Act (MTCA).

IMMUNITY - MARYLAND

[Coit v. Nappi](#)

Court of Special Appeals of Maryland - October 1, 2020 - 2020 WL 5824217

Parents of patient, who died as result of cardiac arrest following an acute asthma attack, and patient's estate filed suit against paramedic, emergency medical technician (EMT) and county, who was their employer, asserting wrongful death and related claims.

The Circuit Court entered summary judgment for defendants. Parents and estate appealed.

The Court of Special Appeals adopting motions court's findings, held that:

- Record did not show that paramedic's and EMT's pre-arrival conduct was willful or grossly negligent, so as to defeat paramedic's and EMT's claims of immunity under Good Samaritan Act and Fire and Rescue Companies Act;
- Record did not show that paramedic's and EMT's post-arrival conduct was willful or grossly negligent, so as to defeat paramedic's and EMT's claims of immunity under Good Samaritan Act and Fire and Rescue Companies Act;
- Estate of patient did not establish causation, as required for estate's wrongful death claims against paramedic and EMT;
- Any summary judgment testimony from patient's friend, suggesting that patient would have survived if paramedic and EMT had arrived at friend's house sooner and had assessed and treated patient more aggressively, was not admissible as expert testimony; and
- County was entitled to governmental immunity under Local Government Tort Claims Act (LGTCA) with respect to § 1983 claim brought against county by estate of patient.

MUNICIPAL CORPORATIONS - NEW YORK

[Brown v. New York City Department of Transportation](#)

Supreme Court, Appellate Division, First Department, New York - October 15, 2020 - N.Y.S.3d - 2020 WL 6065381 - 2020 N.Y. Slip Op. 05807

Pedestrian brought personal injury action, which alleged that she stepped into an area of a missing sidewalk curb, causing her to trip and fall, against company that owned the premises abutting the sidewalk and against company that managed the building abutting the sidewalk.

The Supreme Court denied defendants' motion for summary judgment. Defendants appealed.

The Supreme Court, Appellate Division held that sidewalk curb was not a "sidewalk" within meaning of city administrative code.

Area of a missing sidewalk curb, which was a sizable gap located next to a tree well, was not a "sidewalk," within meaning of city administrative code provision governing duties of abutting property owners, and thus abutting property owners were under no duty to maintain the sidewalk curb in a reasonably safe condition.

EMINENT DOMAIN - OHIO

State ex rel. New Wen, Inc. v. Marchbanks

Supreme Court of Ohio - October 14, 2020 - N.E.3d - 2020 WL 6050679 - 2020 -Ohio- 4865

Following grant of writ of mandamus to compel Department of Transportation and its director to commence appropriation proceedings for taking of real property, property owner filed application for award of reasonable attorney fees and costs.

The Supreme Court held that:

- Attorney-fee provisions of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 did not create statutory basis for award of attorney fees;
- Provisions of the Act governing approval of contracts did not provide statutory basis for award of attorney fees;
- State regulation did not support award of attorney fees; and
- Owner was not entitled to attorney fees under § 1988.

Provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, authorizing a court to award attorney fees to the real property owner when a federal agency institutes a condemnation proceeding in federal court or to the prevailing or settling plaintiff in an inverse-condemnation proceeding against the United States for the taking of property by a federal agency, apply only to exercises of eminent domain by federal agencies and do not create a statutory basis for an award of attorney fees in a state mandamus action seeking to compel an appropriation proceeding for the taking of real property.

Provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, providing that before a federal agency may approve a project or contract with an acquiring agency, such as the Ohio Department of Transportation, the acquiring agency must give satisfactory assurances that property owners would be paid or reimbursed for necessary expenses, including reasonable attorney fees, imposes an obligation upon federal agencies to ensure certain conditions are met before approving contracts and is not statutory authorization for an award of attorney fees in a state mandamus action seeking to compel an appropriation proceeding for the taking of real property.

State regulation adopting language of federal regulation authorizing recovery of attorney fees by a prevailing or settling plaintiff in an inverse-condemnation proceeding was not predicated on statutory grant of authority and, thus, did not support award of attorney fees in property owner's mandamus action seeking to compel the Department of Transportation to initiate appropriation proceeding for the taking of real property; statute pursuant to which regulation was promulgated did not allow property owner who initiated inverse-condemnation proceeding to recover attorney fees or authorize agency to promulgate rule that provided for those fees, and other statute referred to in that statute provided for award of attorney fees in condemnation proceeding instituted by state agency, which was different context.

Because the Supreme Court has no original jurisdiction to hear a § 1983 claim, a party to a mandamus proceeding is not entitled to attorney fees under § 1988 as a "prevailing party" on such a claim.

Harisay v. Clarno

Supreme Court of Oregon - October 8, 2020 - P.3d - 367 Or. 11620 - 20 WL 5951545

Citizens brought action seeking declaratory judgment requiring Secretary of State to certify a ballot initiative which purported to be an “application” to Congress to call a constitutional convention.

The Circuit Court, granted Secretary’s motion for judgment on the pleadings. Citizens appealed, and the Court of Appeals affirmed. Citizens sought review, which the Supreme Court allowed.

The Supreme Court held that as a matter of first impression, initiative was not within the scope of the people’s power “to propose laws” under Oregon Constitution.

Initiative which sought to change federal constitutional law through the mechanism of asking Congress to call a federal constitutional convention was not within the scope of the people’s power “to propose laws” under Oregon Constitution’s initiative provision, as it did not intend any change to Oregon law, and thus could not be adopted through initiative process or be placed on the ballot.

ANNEXATION - WASHINGTON

Ronald Wastewater District v. Olympic View Water and Sewer District

Supreme Court of Washington - October 15, 2020 - P.3d - 2020 WL 6106955

Wastewater district brought action against sewer district, town, and county, seeking a declaration confirming that its corporate boundary included a particular area, based on a prior annexation ordered by a court.

The Superior Court granted wastewater district’s partial motion for summary judgment. Sewer district and town appealed. The Court of Appeals reversed. Wastewater district’s petition for review was granted.

The Supreme Court held that:

- Sewer district did not relinquish its authority over disputed area;
- To be properly transferred and annexed, the territory must be exclusively within the transferring county’s geographic service area, unless the existing district relinquishes its sewerage authority;
- Prior annexation order was void for lack of personal jurisdiction; and
- Prior annexation order was void for lack of subject matter jurisdiction.

Original sewer district did not relinquish its authority over disputed area, and thus wastewater district and county adjacent to area had no right to unilaterally annex area; even though sewer district gave county permission by contract to provide water service to area, and even if permission extended beyond water service and included provision of sewer service, sewer district did not relinquish primary sewerage authority, and sewer district and area’s actual county was not involved in annexation process.

To be properly transferred and annexed under the former statutory scheme, the sewer-service territory must be exclusively within the transferring county’s geographic service area and cannot be within another district’s service area, unless the existing district relinquishes its sewerage authority to the transferring county; the statutory authority does not permit a hostile takeover of another district’s service area without notice or permission.

US State Liability Burdens Fall to 5%; Five States Top 20% Driven by Pensions - Fitch

Fitch Ratings-New York-26 October 2020: Long-term liabilities burdens fell for a fourth straight year for U.S. states and hit a notable threshold last fiscal year, according to Fitch Ratings in its latest annual survey of state direct debt and pension liabilities.

Long-term liabilities relative to personal income declined to 5% in fiscal 2019, from 6% in fiscal 2016. “The downward trend does not necessarily reflect an enduring drop in state burdens, especially for pensions,” said Senior Director Doug Offerman. “Instead, robust economic growth up to the coronavirus pandemic drove faster gains in personal income than in debt and pensions.”

Over that time, median personal income by state grew 4.1% annually. Direct debt, which constitutes about 40% of long-term liabilities, remained relatively flat, at 2.1% of personal income in fiscal 2019, vs. 2.3% in fiscal 2016. State debt is carefully managed, including through various limits on authorization, issuance and debt service.

By contrast, net pension liabilities, adjusted by Fitch to a 6% investment return assumption, fell to 2.7% in fiscal 2019, from 3.1% in fiscal 2016, and has been volatile, driven by shifting market values for pension assets.

States have tightened pension management over the last decade, trimming benefits, lowering return targets and raising contributions, but only a few states have seen lower pension burdens. This is because falling investment return assumptions raise liabilities, more than offsetting the incremental gains from lower benefits, higher contributions and other assumption changes.

Five states continue to carry elevated long-term liability burdens above 20% of personal income in fiscal 2019, including Illinois (at 27% of personal income), Connecticut, New Jersey, Hawaii and Alaska. For all of them, pensions remain the driver of elevated liabilities. Conversely, 37 states carried burdens below 10% of personal income, which Fitch views as low.

Fitch’s ‘2020 State Liability Report’ is available at ‘www.fitchratings.com’.

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Fitch Ratings Launches Comparative Tool for U.S. State & Local Government.

Fitch Ratings-New York-22 October 2020: Fitch Ratings has launched its first Fitch Analytical Comparative Tool (FACT) for U.S. state and local governments.

The Excel-based tool provides an easy-to-use, interactive platform with clear graphics to provide market participants with a deeper understanding of the credit profiles of U.S state and local governments. FACT allows for multi-dimensional comparisons of demographic data, financial metrics, and key rating drivers for over 850 Issuer Default Ratings, including states, counties, cities and school districts. Users can create customised charts and peer groups to gain credit insights and support credit analysis. FACT currently presents information for fiscal years 2016 - 2019, and Fitch anticipates quarterly updates as new financial and economic data is released.

Ratings Summary

FACT includes a comprehensive view of the portfolio's rating distribution and transition tables to track rating movements from 2015 through 2019. A summary of key rating driver assessments is provided by unit of government and rating level.

Peer Group Selector & Median Analysis

FACT's peer group selection function allows the user to select a customized peer group of any size and compare key rating driver assessments, demographic trends and the performance of various financial metrics from fiscal years 2016 through 2019. Users are offered various cross-sections of the data; dynamic visualizations allow for intuitive analysis of peer group medians and time series.

Issuer Analysis

The Issuer Analysis section of the tool allows users to take an in-depth look at a single issuer of interest, through the lens of Fitch's Key Rating Drivers. For a selection of financial and demographic metrics, issuers can be compared to various peer groups or the portfolio.

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[State Websites Offer Fiscal Data on Local Governments.](#)

Practices and platforms vary, but dashboards provide insight and enhance transparency

Most states require local governments to submit financial data—typically on an annual basis—and at least 38 now present that local fiscal data on easily accessible online platforms to give the public access to important information on their cities, towns, and counties.

The various state websites, which promote transparency by allowing a glimpse into local government finances, offer a range of features. Some enable users to compare localities, for example, while others let people create graphic visualizations of historical trends on local taxes and spending.

Among the states with such dashboards, California, Massachusetts, Michigan, New York, North Carolina, Ohio, and Washington provide assessments of local governments' fiscal health using financial indicators or overall scores to bring additional insights. For example:

[Continue reading.](#)

The Pew Charitable Trusts

By: Jeff Chapman & Katy Ascanio

October 20, 2020

[Stressed Cities Strike Billions in Debt Plans From Ballots.](#)

- **Bond queries facing voters are down nearly \$20 billion**
- **Pandemic isn't time to ask voters to approve loans: officials**

Local governments are scuttling borrowing plans that would normally be put before voters on Election Day as financial uncertainty strains municipal budgets and stresses taxpayers that need to sign off on such debt.

State and local governments will ask voters to weigh in on at least \$52 billion worth of bond measures on the Nov. 3 ballot, according to preliminary data from IHS Markit. That's the lowest for a presidential election year since 2012 and nearly \$20 billion less than 2016 even as interest costs are well below the rates of four years ago.

"We did not feel it was right or responsible to place further burdens on our residents," said Mayor Linda Anthony of West Lake Hills, Texas, whose town shelved two measures totaling \$22 million in what would have been its first ever bond deal. "We don't want our maiden attempt to fall flat on its face, and it didn't seem like the right time to ask residents to vote to increase their taxes, and that's essentially what it would have done."

Ballot measures where residents vote on whether or not to allow a municipality to sell bonds to finance public work projects like new schools, parks or a town hall are getting canceled, showcasing the fiscal anxiety facing U.S. towns and cities. Budgets have been hit hard by the coronavirus pandemic, as shutdowns slash tax revenue and public health costs rise. States and local governments face combined shortfalls of \$450 billion through fiscal 2022, according to a September estimate from Moody's Analytics.

It took West Lake Hills officials four years to put together the bonding plan to finance road and drainage improvements and to pay for a new municipal complex. The deal was originally supposed to go on the ballot in May but that election was also postponed amid the pandemic.

Deferring infrastructure projects, which are often financed by bonds, is usually one of the first steps governments take during an economic downturn, according to Christopher Berry, a public policy professor and academic director of the Center for Municipal Finance at the University of Chicago.

"It's easier to push off for a couple of years because they're generally long-term projects that voters won't miss in the short-run," Berry said. "It's a natural response when times are tight to cut things that are less painful in the moment — even if we are just delaying the pain."

Nixed Borrowings

And it's not just towns and cities that are nixing bond-ballot measures this election. New York state pulled a \$3 billion environmental bond from the November ballot, citing a dire financial situation stemming from the pandemic.

"It was my proposal. I believe deeply in it, but we need to have financial stability before we do that," Governor Andrew Cuomo said in July.

Texas is normally a boon for municipal deals because of its soaring population and infrastructure needs. But this year Irving, Texas, outside of Dallas, canceled 12 bond ballot measures totaling more than \$560 million for projects ranging from parks and recreation improvements to an art project. And further south, in Killeen, Texas, the school board canceled a proposed \$265 million bond.

"The Covid crunch and its effect on the economy in the state of Texas just appears to be unbearable," said Corbett Lawler, president of Killeen ISD board of trustees, "and with all that unknown we didn't want to saddle our voters with a \$200 plus million bond."

'Too Uncertain'

Money from the sale would have constructed four new elementary schools, renovated a high school and improved athletic facilities. Lawler said the district may revisit the bond issue in a year or so. "It's just too uncertain right now."

The West Ada School District near Boise, Idaho, originally planned to ask voters for more than \$60 million for campus improvements but postponed the ballot item because of the rapidly climbing unemployment rate and deteriorating economy, said Char Jackson, a district spokesperson. She said the district plans to run the bond in March.

Not all local governments are taking such austerity measures, especially amid near record low borrowing rates. The Los Angeles Unified School District is asking voters for \$7 billion in bonds for school construction upgrades, and Dallas Independent School District has a \$3.7 billion measure on the ballot, which is believed to be the largest issuance of debt from any local entity in Texas history.

Indefinitely Postponed

Tom Kozlik, head of municipal strategy at Hilltop Securities said it took years for governments to be comfortable issuing debt after the financial crisis. Governments were concerned about having one more thing to pay for, he said. Similar discussions in statehouses and city council meetings are happening now.

“Even though the money is near the cheapest it’s ever been, you need to have the revenue to pay it back and there’s a lot of other expenditures grabbing at that money right now,” Kozlik said.

In South Carolina, the Rock Hill School board indefinitely postponed a \$295 million bond measure. The decision whether or not to reapply to voters depends on the education needs in a post-Covid world, said Helena Miller, chairman of the board.

“The needs before and after Covid are very different,” she said. “We may have to go back to the drawing table to see what the needs in our community really are.”

Bloomberg Economics

By Danielle Moran

October 23, 2020, 6:30 AM PDT

— *With assistance by Nic Querolo*

[Muni Bond Insurers See Demand Grow Amid Pandemic Worries.](#)

- The two active municipal bond insurers — Assured Guaranty (AGO +2.4%) and Build America Mutual — are seeing opportunity in the erosion in local government creditworthiness.
- That’s leading both municipal bond issuers and some investors to insure the debt against municipality to defaults. The share of newly issued muni debt carrying insurance increased to 7.13% in Q2 and was 6.8% in Q3 vs. an average of 4.72% in the 10 years before the pandemic, the Wall Street Journal reports, citing Municipal Market Analytics data.
- For muni bond issuers, insuring the debt helps to keep borrowing costs down.

[Continue reading.](#)

Seeking Alpha

By: Liz Kiesche, SA News Editor

Oct. 22, 2020

[Bond Insurance Returns to the Muni Market in a Big Way.](#)

Build America Mutual and Assured Guaranty see opportunity with the drop in local government creditworthiness

The decimated municipal-bond insurance industry is having a renaissance.

Weakened by Covid-19, state and local borrowers are using insurance at their highest rates in more than a decade. This type of upfront protection offers a promise from insurance companies to pay investors if the municipality defaults. Overall, the share of newly issued muni debt carrying insurance reached 7.13% in the second quarter and was 6.8% in the third quarter, up from an average of 4.72% in the decade before the pandemic, according to Municipal Market Analytics data.

Fueling the trend is a drop in local government creditworthiness that has left public officials looking for ways to keep down borrowing costs. That dynamic has spelled opportunity for the two active municipal bond insurers, Build America Mutual and Assured Guaranty Ltd., and helped the muni market run smoothly, despite significant stress.

For investors, however, the increased need for insurance is a growing concern, especially since insurance firms are only willing to back certain types of bonds.

“The bond insurers are only underwriting policies for bonds they believe are not going to default,” said Nicholos Venditti, senior portfolio manager at Wells Fargo Asset Management.

Most governments continue to borrow without insurance and the risk of default remains low, limiting how much buy-and-hold investors benefit from the sacrifice in yield that comes with insurance. Out of an estimated 50,000 issuers in the roughly \$4 trillion municipal market, there have been only about 50 new defaults since the pandemic began.

Among recent issuers, Oregon State University used bond insurance to secure lower interest rates on about \$300 million in taxable long-term bonds issued this month to help pay for capital projects and manage the pandemic’s financial impact, said spokesman Steve Clark.

The school didn’t attach insurance to its last two pre-pandemic bond issues, but revenues from housing, dining and athletics have fallen as a result of Covid-19 as has international student enrollment. The majority of prospective investors preferred an insured bond issue, Mr. Clark said, and the rate the school was able to get fell by 0.08 percentage points after adding insurance.

Mr. Clark said the decision to use insurance wasn’t based on the pandemic or its impacts on the school but on investor feedback and a desire to lower borrowing costs.

A recent stress test by Merritt Research Services found that if universities lost a quarter of their revenues, 44% of public schools and 39% of private schools would exhaust any available financial cushion unless they made cuts. In the same scenario, about a fifth of hospitals would run out of cash, the firm found.

“In a sector like higher education where all credits tend to get painted with a negative brush...to some degree putting insurance on top of it is attractive to some investors who then don’t have to do all the research,” said Dan Hartman, managing director at PFM Financial Advisors LLC, which counsels government borrowers.

Mr. Hartman estimated that an A-rated borrower might pay \$500,000 for insurance that would lower rates on a \$100 million 20-year bond issue by 0.05 to 0.1 percentage points after factoring in the cost of insurance. The savings in that scenario could amount to roughly half a million present-day dollars, stretched out over the life of the bond, he said.

Issuers aren’t the only ones buying more insurance; investors are also choosing to add protection to their uninsured holdings.

Asset manager Lord Abbett this spring bought insurance on some of its munis after ratings firms placed negative outlooks on the issuers, said partner and director Daniel Solender. The extra protection will enable the bonds to remain in the firm's high-grade portfolios in the event of a downgrade or help the firm find buyers if it chooses to sell, Mr. Solender said.

The return of significant insurance to the muni market comes more than a decade after that industry was decimated in the financial crisis.

Extra Protection

Bond insurance is more popular than at anytime since the last recession but remains far below pre-crisis levels.

In the wake of the crisis, bond insurance firms that had sold protection on residential mortgage-backed securities lost their AAA credit ratings, creating a host of problems for the state and local borrowers they insured.

Build America Mutual and Assured Guaranty said they are well positioned to weather pandemic-related downgrades or losses. Both firms have increased prices on some insurance products, according to people familiar with the matter.

S&P Global Ratings credit analyst David Veno said Build America Mutual and Assured Guaranty each have enough capital to cover the insurance payout scenarios resulting from the pandemic and maintain their financial stability. Both are rated AA by S&P.

Build America Mutual, which started in 2012, sticks to government-backed bonds and steers clear of nonprofit hospitals and private universities, which also issue debt in the municipal market.

"We sort of have stuck to our knitting all along, so that's the backdrop of why we are less concerned about the severity of loss in our portfolio going forward," said Chief Executive Seán McCarthy.

Mr. McCarthy said that while he believes the likelihood of default on this type of debt is very low, it isn't zero, creating a benefit even for buy-and-hold investors.

"When you take out a life insurance policy, you don't think you're dying next year," he said.

Assured Guaranty, the only insurance firm from the financial crisis to remain active, now has a portfolio comprising 96% municipal debt and insures about \$232 billion, less than half the amount it did before the crisis. "We believe our insured portfolio is in good shape to weather this economic disruption," said Robert Tucker, a spokesman.

It remains to be seen in what shape insurers will emerge from the pandemic, said Josh Esterov, a senior insurance analyst at CreditSights. Any gains from the increase in business could be eroded by payment delinquencies on bonds in the insured portfolio.

"Is this good or bad? It's going to depend on the level of delinquencies," Mr. Esterov said.

The Wall Street Journal

By Heather Gillers

Oct. 22, 2020 5:30 am ET

[Fitch Ratings Updates Airports Rating Criteria.](#)

Fitch Ratings-New York-22 October 2020: Fitch Ratings has published an updated version of its "[Airports Rating Criteria](#)," initially published on March 24, 2020. The primary changes improve alignment with the Infrastructure and Project Finance Rating Criteria (March 2020) in the areas of debt structure, infrastructure development/renewal and financial metric definitions.

"Airports Rating Criteria" is available at 'www.fitchratings.com'.

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[Fitch Proposed U.S. Public Finance Not-For-Profit Life Plan Community Rating Criteria \(Exposure Draft Frequently Asked Questions \(FAQs\)\)](#)

[Read the Special Report.](#)

20 OCT, 2020

[Fitch U.S. Public Finance Not-For-Profit Life Plan Community Rating Criteria \(Summary of Exposure Draft\)](#)

[Read the Exposure Draft.](#)

[Fitch Project Financing in the U.S. Higher Education Sector \(Debt Structure and University Relationship Determine Criteria Application\)](#)

This report details Fitch Ratings' approach to determining the primary criteria when rating projects at or in the vicinity of U.S.-based, not-for-profit private and public colleges and universities (institutions). Projects can range from student housing, parking and mixed-use to energy and utility projects, or a combination thereof. Fitch's approach to higher education project financings can include the U.S. Public Finance College and University Rating Criteria, the Infrastructure and Project Finance Rating Criteria or the U.S. Affordable Housing Rating Criteria. The coronavirus pandemic resulted in fiscal challenges at institutions and virtual learning dampened housing demand, but Fitch anticipates an increase in project financings and public private partnerships (PPPs) over the medium term as institutions look to expand housing and repurpose assets. Debt Structure and University Involvement Determine Primary Criteria Determining which criteria will anchor the analysis depends on debt structure, repayment, affiliation with the institution, and exposure to completion and cost risk. While anchoring its analysis on one criteria, Fitch will look to the other criteria to inform its assessment of the key rating drivers in a higher education setting.

[ACCESS REPORT](#)

Tue 20 Oct, 2020 - 9:54 AM ET