

2021 Post-Issuance Compliance Webinar

Biden's Infrastructure Plan: The Potential Impact On The Municipal Bond Market

Presented By:

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2021 POST-ISSUANCE COMPLIANCE WORKSHOP

Hybrid Event

A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing

WHEN: October 28-29, 2021 (tentative)

**WHERE: Vdara Hotel & Spa | Las Vegas *
& Virtual**

Registration opening soon

For information, please visit:

<https://www.blxgroup.com/event/2021-blx-orricks-post-issuance-compliance-workshop/>

** In-person attendance will be limited to 32 attendees.*





Discussion Outline

- I. Biden's Infrastructure Plan
- II. IRS Enforcement Update
- III. COVID Related Disclosures
- IV. LIBOR Transition



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BIDEN'S INFRASTRUCTURE PLAN

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Biden's Infrastructure Plan

Passed legislation:

- HR 2

Proposed legislation:

- LIFT Act (Local Infrastructure Financing Tools) – Sewell (D-AL)
- American Infrastructure Bonds Act – Wicker (R-MS), Bennet (D-CO)
- LOCAL Infrastructure Act (Lifting Our Communities Through Advance Liquidity for Infrastructure) – Wicker (R-MS), Stabenow (D-MI)
- Investing in Our Communities Act – Ruppertsberger (D-MD), Stivers (R-OH)



Biden's Infrastructure Plan

Open questions:

Q: What will the infrastructure bill contain for the tax-exempt bond community?

A: No actual text yet on Biden's plan

A good starting point may be HR 2, a.k.a “The Moving Forward Act” - passed in the House on July 1, 2020

Q: Will there be 60 votes in the Senate for infrastructure legislation?

Q: Will the budget reconciliation process be used for infrastructure legislation?

Q: What is the timing?



Biden's Infrastructure Plan

What does HR 2 contain?

- Direct Pay Bonds – “Qualified Infrastructure Bonds”
- Advance Refunding Bonds
- Small Issuer Bank Qualified Exception to \$30 million
- Increase Volume Cap
- New Exempt Facility Bond for Zero Emission Vehicle Infrastructure



Biden's Infrastructure Plan

What does HR 2 contain? (cont.)

- Repeal of Volume Cap for water and sewer bonds
- Increase in qualified highway or surface freight transfer facility bonds increased from \$15 billion to \$18.75 billion
- Direct Pay Bonds – School Infrastructure Bonds



IRS ENFORCEMENT UPDATE

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IRS Enforcement Update

IRS enforcement trend

- Fewer total audits
 - 2020 – even fewer due to COVID-19 (March – July no new examinations)
- More targeted audits / less "random" audits



IRS Enforcement Update

IRS enforcement trend

- Information routinely requested:
 - Provide a copy of arbitrage rebate analysis
 - Provide a copy of annual private business use analysis
 - Provide copies of management and service contracts, research agreements
 - Provide a list of bond-financed property



IRS Enforcement Update

What's happening at the IRS and TE/GE (Tax Exempt and Government Entities)?

- New TE/GE Commissioner – Sunita Lough
 - *Brings substantial experience to the role, which she held from 2014-2019*
- IRS – 10% budget increase in 2021 = additional \$1.2 billion
- The IRS is hiring!



IRS Enforcement Update

What's happening at the IRS and TE/GE (Tax Exempt and Government Entities)?

- New compliance resource page

<https://www.irs.gov/tax-exempt-bonds/compliance-resources-for-issuers>



IRS Enforcement Update

2021 IRS Compliance Strategies for Tax-Exempt Bonds

- Arbitrage violations
- Student loan bonds
- Yield restrictions on Form 8038-G (governmental bonds)
- Continuation of 2020 compliance strategies
 - Public safety and jail bonds
 - Sinking fund overfunding – Tax Credit Bonds
 - Variable rate bonds



COVID RELATED DISCLOSURES

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COVID-19 Related Disclosures

General approach to COVID-19 disclosures

- Impact of COVID-19 on the operating and financial condition of certain industries is likely to be “material” (example: healthcare, transportation, student housing, etc.)
 - Even if not “material,” investors will be expecting disclosure of the impact to the organization and SEC is encouraging disclosure
- Issuers need to evaluate specific facts and circumstances and develop disclosure that is complete and accurate in all material respects, while taking into account the ***total mix of information available in the market***
- Disclosure of the related risks and circumstances will be different for each issuer



COVID-19 Related Disclosures

- Since the COVID-19 outbreak, most issuers have provided either Annual or Quarterly Reports pursuant to their continuing disclosure undertaking(s) or provided disclosure for a new offering
- Even if continuing disclosure undertaking does not require, it may be useful for issuers to provide context to financial and operating performance (MD&A)



COVID-19 Related Disclosures

- Event Related Disclosures
 - Incurrence of financial obligation notices may be required pursuant to the continuing disclosure undertaking or be provided voluntarily for any material COVID-19 related grants, advances and loans (amounts, date received, repayable, type of distribution (general or specific))
 - Draws on debt service reserve accounts, rating changes, non-payment related defaults, etc.
- Events of Default (rate covenants, liquidity requirements, etc.)



COVID-19 Related Disclosures

- Any use of forward-looking statements warrants careful consideration
 - SEC is encouraging inclusion of forward-looking statements as beneficial to issuers/borrowers, investors and the capital markets (May 4, 2020)
 - On the other hand, safe harbors for forward-looking statements by public companies do not apply to issuers and borrowers in the municipal securities market
 - Reasonable basis for projections and disclaimers will be critical



LIBOR TRANSITION

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5 Things You Need to Know about the LIBOR Transition

1. On March 5, 2021, the FCA (the regulator of LIBOR) announced that the transition date for most US LIBOR settings has been pushed out to June 30, 2023

LIBOR Currency	LIBOR Settings	Date
USD	1-week, 2 month	December 31, 2021
USD	All other settings (i.e., Overnight/Spot Next, 1-month, 3-month, 6-month and 12-month)	June 30, 2023
GBP, EUR, CHF, JPY	All settings	December 31, 2021



LIBOR Transition

2. The FCA announcement also set in stone the spread between LIBOR and SOFR that will be used to make SOFR more equivalent to LIBOR, to account for the fact that SOFR is a "risk-free rate" but LIBOR is not
 - Calculated as the median of difference between the rates looking back 5 years
 - For example, 1-month LIBOR will be set at $\text{SOFR} + .11448\%$ and 3-month LIBOR will be set at $\text{SOFR} + .26161\%$
 - However, the FCA announcement does not, in and of itself, result in the actual replacement of benchmark rates



LIBOR Transition

3. The ISDA Protocol went into effect in January 2021 for swap agreements
 - Locked in the credit spread adjustment for replacement of LIBOR with SOFR
 - New swaps that simply incorporate the 2006 ISDA Definitions automatically include transition terms contemplating SOFR
 - Legacy swaps can incorporate transition terms contemplating SOFR through an ISDA Protocol
 - Consult with your Financial Advisor and Bond Counsel (for swaps involving tax-exempt bonds) before adhering to the Protocol for legacy swaps

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LIBOR Transition

4. Legislation was enacted in New York on April 6, 2021 which addresses LIBOR risks under contracts governed by NY law without “effective fallbacks”

- If an instrument is silent on what replaces LIBOR or if it looks to dealer polls or similar mechanisms, then (absent the parties opting for another solution), market-accepted adjusted SOFR will become operative under the instrument by operation of law
- If an alternative non-LIBOR rate is specified (such as the Federal Funds (Effective) Rate or the Prime Rate), the law would not override the contractual fallbacks
- Federal legislation based on the New York legislation is being circulated in the U.S. House of Representatives that would apply regardless of state governing law

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LIBOR Transition

5. The Fed and other regulators have made it clear that there should be no new LIBOR loans – for any setting – after the end of 2021 and are increasingly starting to pressure those they regulate
 - Understand your existing LIBOR exposure
 - Consult with your Financial Advisor and Bond Counsel if any LIBOR instrument is a tax-exempt obligation or a swap agreement related to it



LIBOR-2022

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