

# **NAHEFFA**

## **Spring Conference**

**PUBLIC POLICY UPDATE**



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# Who Is NABL?

- Established in 1979 to “promote the integrity of the municipal market through the education of its members in the laws affecting state and municipal bonds”
- Specialty bar association representing ~2,600 attorneys working on public finance transactions
- Main Purposes:
  - Resources and Education (CLE)
  - Networking and a Forum for Idea Exchange
  - Policy Advocacy



# Who Are Our Members?

- Represent state and local government issuers, nonprofit institutions and other borrowers, underwriters, trustees, and investors
- Three main areas of practice:
  - Tax Law
  - Securities Law
  - General (Municipal) Law



# What Do We Advocate For?

- Bonds... of course!
- Serve as a technical expert for Congress, federal agencies, and market participant groups in D.C. like NAHEFFA
- Lead on advocacy with our partners:





# NABL Priorities

- Protect the Tax-Exemption on Municipal Bonds
- Restore Tax-Exempt Advance Refunding Bonds
- Create a New Direct Pay Bond Program (“BAB’s 2.0”)
- Expand Tax-Exempt Private Activity Bonds (PABs)
- Modernize Small Borrower’s Exemption (Bank Qualified Debt)

# Quick Timeline of the 117<sup>th</sup> Congress

- **Jan. 5:** Runoffs in Georgia determine razor-thin Democratic majority in Congress
- **Jan. 20:** Beginning of Biden Administration
- **Jan. – Feb.:** Impeachment Proceedings
- **Mar. 11:** Passage of American Rescue Plan Act (ARPA)
- **Jun. – Nov.:** One really long infrastructure week!
- **July – Today:** Build Back Better discussions – Is there any chance?
- **Nov. 15:** Passage of *Infrastructure Investment and Jobs Act* – now called *Bipartisan Infrastructure Law* – with key bond changes included!
- **Also on the agenda:**
  - FY23 appropriations
  - Nominations
  - Climate
  - Ukraine
  - Elections
  - Federal reserve actions / inflation
  - Etc.

# Infrastructure Investment & Jobs Act

- **Approved by Senate in bipartisan 69-30 vote on August 10**
- **Approved by House in a bipartisan 228-206 vote on November 8**
- ✓ \$1.2 trillion in spending – including \$550 billion in new money
- ✓ New spending includes: \$110 billion for roads, \$66 billion for rail, \$73 billion for power infrastructure, \$65 billion for broadband, \$55 billion for water infrastructure, \$50 billion for resiliency measures (including cybersecurity), \$25 billion for airports, \$17 billion for ports and waterways, \$11 billion for safety, and \$15 billion for low-carbon, zero-emission, and electric vehicles
- ✓ Pay-fors include delaying Part D rebate rule, IRS reporting requirements for digital asset transactions, reinstating certain Superfund fees



# Bipartisan Infrastructure Law

- **Signed into law by President Biden on November 15**
- Despite initial optimism for advance refunding and direct subsidy bonds, only three bond provisions were ultimately included:
  - ✓ Creation of qualified broadband PABs
  - ✓ Creation of qualified carbon capture PABs
  - ✓ Doubling of nation-wide limit for qualified highway and surface freight transfer facility bonds
    - From \$15 billion (Bush-era) to \$30 billion

# Build Back Better Act

- Originally included a number of muni-friendly provisions:
  - ✓ ARBs, subsidy bond program, BQD, small issue PABs, first-time farmer PABs, exempt water from PAB volume caps, zero-emission vehicle infrastructure PABs, etc.
- Expansion of Davis Bacon requirements to new PABs
- House-passed version included to bond provisions:
  - Tribal bond fix
  - Reduce PAB requirement for LIHTC from 50% to 25%
- Democrats could not get to the votes needed in Senate to pass under reconciliation leaving future uncertain. Where do we go from here?

# Where do we go from here?

- Possible that we see renewed effort on reconciliation in scaled down bill – Build Back Better by another name:
  - Every day closer to election makes more difficult
  - Post-election could open pathway – especially if Democrats lose majority in either or both chambers
- Possible tax titles:
  - FY2023 appropriations
  - Tax extenders
  - Pre-election priority agenda bill
  - “Lame Duck” Congress bill

# Appropriations Update

## FY2022

- \$1.5 trillion in non-defense discretionary funding passed March 15
  - Money for IIJA/BIL programs
  - No claw back of state COVID funds
  - Includes LIBOR fallback language
  - Return of earmarks

## FY2023

- Biden releases \$5.8 trillion budget on March 28
  - No direct muni provisions
  - Proposes minimum tax on ultra-wealthy (including unrealized gains)
  - Various tax increases
- Starts October 1, 2022

# LIBOR Phaseout

- LIBOR is ending (period).
  - Certain USD Libor rates have ceased as of December 31, 2021 with others continuing on to June 30, 2023.
  - U.S. regulators advise no new LIBOR contracts in 2022
- IRS reissuance safe harbors for legacy contracts
- *Adjustable Interest (LIBOR ) Act*
  - *Provides automatic fallback language for legacy contracts*
  - *Similar to (and would supersede) laws passed in New York and Alabama*

# Securities Update

- Securities and Exchange Commission
  - 3 Democrats / 1 Republican; 1 Vacancy
  - Continued focus on ESG in the corporate market
  - Tracking Emerging Issues:
    - Money Markets
    - Trading Systems
    - Cryptocurrency
    - Etc.
  - Release of climate disclosure rule for corporate market

# Securities Update (continued)

- Municipal Securities Rulemaking Board (MSRB)
  - RFI on ESG Practices in the Municipal Market
    - Focused on ESG-related risk disclosure AND ESG-labeling
    - Responses were due March 8: several cities submitted (Detroit, NYC, etc.)
    - NABL Comments:
      - Scope of Authority
      - Materiality of ESG Risks Covered
      - Nascent ESG-Labeled Market not Ripe for Regulation

# Tax Update

- Rollout of mandatory e-filing for 8038-CP forms
  - IRS subsidy request forms for BABs, recovery zone bonds, certain other tax credit bonds
- Focus on expiring COVID-19 era relief
- Telephonic TEFRA hearings made permanent
- Final LIBOR Rule
- Discussions on a “Global Minimum Tax”





Thank you for your interest!  
**Questions?**

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