

# Washington, D.C. Update

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Member

Mintz



# Agenda

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- Organizational Updates
- D.C. Update
  - What's Happened?
  - What's Going to Happen (Maybe)?
  - Tax Update
  - Securities Update
  - Market Update
- Q&A



# Organizational Update

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What's New



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# About Us

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- Specialty bar association founded in 1979 focused on areas of public finance law
- Approx 2,300 members

Education | Networking | Advocacy



# Organizational Updates

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- New website launched February 2023
  - [www.nabl.org/basics](http://www.nabl.org/basics) → Free encyclopedia of more than 400 municipal bond related terms and concepts
  - [www.nabl.org/lookup](http://www.nabl.org/lookup) → Member directory of bond lawyers
  - [www.nabl.org/resources](http://www.nabl.org/resources) → Research library with more than 350 reports, model docs, webinars, and comment letters.

# Work Projects

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- Risk Factors Disclosure Best Practices: July 2023
- Tax Due Diligence Matrix: Late fall 2023
- Updates to our Model Bond Opinion: 2024
- Model CDA: Late 2023 / Early 2024



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What happens in Washington, D.C. has the potential to reshape our municipal markets.

# Our Priorities

## Main Campaign

**Main**

**#BuiltByBonds**

**Protect** affordable financing for our communities.

## Other Priorities

**One**

**Modernize** financing options available to our smallest communities and nonprofit borrowers. (BQD)

**Two**

**Expand** financing options for innovative and critical projects. (PABs)

**Three**

**Allow** our communities to once again refinance at lower rates. (ARBs)

**Four**

**Equip** our communities with a new financing tool. (Direct Pay)





# What's Happened

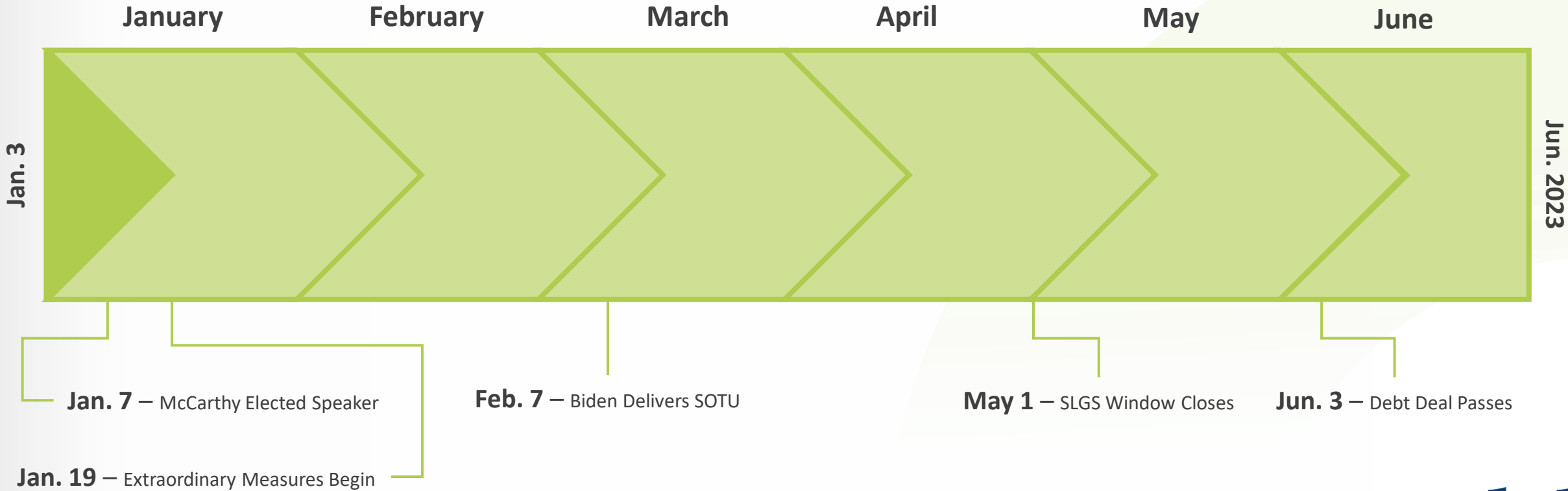
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118<sup>th</sup> Congress

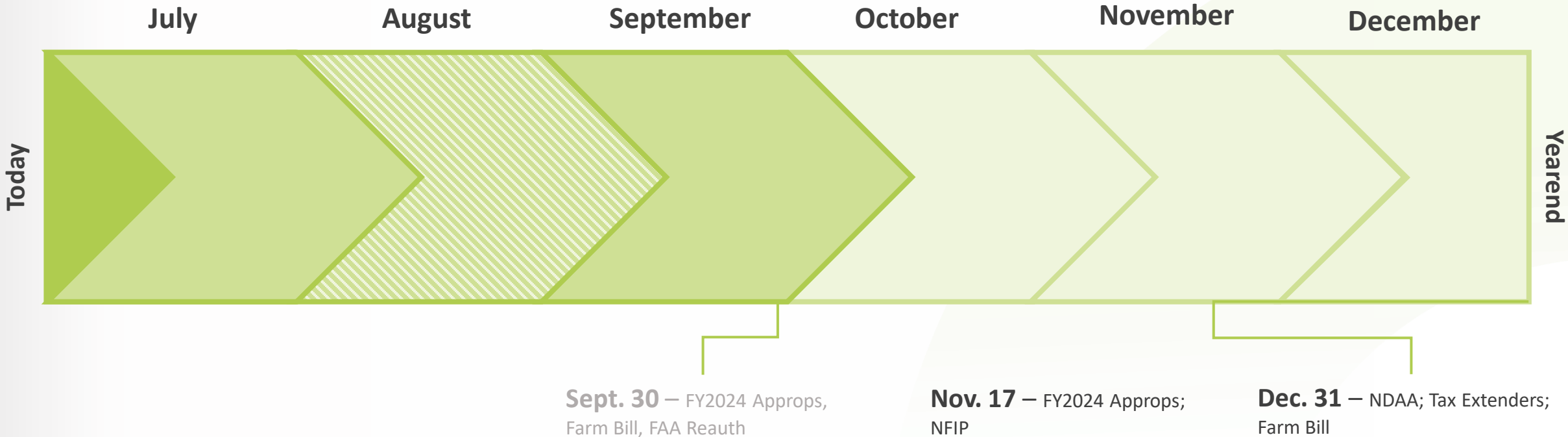


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# Timeline



# Timeline





# Debt Deal

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What happened; and what does it mean?

# The Fiscal Responsibility Act

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- Suspends debt ceiling through Jan. 1, 2025;
- Caps discretionary funding to 1 percent growth for next two budgets;
- Automatic trigger of 1 percent cut if a CR goes beyond Jan. 1;
- Other items and offsets.
- Takeaways:
  - Negative pressure on discretionary spending
  - Complicated politics



# What's Next

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118<sup>th</sup> Congress



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# FY2024 Appropriations

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- “Clean” Continuing Resolution (CR): Maintaining most federal spending at FY2023 levels through November 17, 2023, by which point Congress must:
  - Fully pass FY2024 approps
  - Pass another CR
  - Risk a full/partial government shutdown
- Auto-trigger 1 percent cut to federal spending if full approps are not passed by January 1

# Also On the Agenda

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- Farm Bill: New target date of Dec. 31
  - MAMBA Proposal
- FAA Reauthorization: Temporary extension through Dec. 31
- NDAA
- Tax Extenders? (*Ideally*)



# Prognosis: Our Priorities

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- House and Senate bills for advance refundings;
- Working on introduction of legislation to modernize small borrower exemption;
- Various proposals to modify qualified private activity bonds (PABs);
- Limited momentum on direct pay bond programs, but Senate bill introduced / House bill forthcoming.

# Tax Focus

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- Major focus on Inflation Reduction Act (IRA) implementation:
  - Direct pay and transfer of clean energy tax credits for nontaxpaying entities (e.g. public or not-for-profit utilities)
  - Reduced haircut for credits used in conjunction with T/E bonds
  - Return of corporate AMT

# Tax Focus (continued)

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- Infrastructure Investment and Jobs Act (IIJA)
  - Section 142(o) bonds for qualified carbon dioxide capture facilities
  - Section 142(n) bonds for qualified broadband projects
- Electronic Filing (e-file): Form 8038-CP by December 31, 2023

# Tax Focus (continued)

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- *Indiana Municipal Power Agency v. United States*
  - Questions:
    - 1) Whether the federal government erred in its decision to include federal tax refund payments for Build America Bonds (BABs) in its sequestration of federal programs, and
    - 2) Whether the payments represented a contract and therefore their sequestration is a breach of contract.
- Waiting to hear whether SCOTUS will grant cert.

# SEC Update

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- SEC Asset-Backed Securities Conflicts of Interest
  - Prohibits conflicted transactions related to asset-backed securities but uses broad definitions.
  - Request: exempt municipal securities and issuers from the rules covered terms.
  - NAHEFFA and NABL submitted comments.

# ESG Update

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## **Labeling:**

Marketing bonds based on stated policy objectives with the intention of securing better terms from conscious investors.

## **Risk Factors:**

Disclosure of ESG-related material risk factors to an offering.

## **Procurement:**

Restricting contracting and procurement based on a vendors' nonpecuniary principals.

# ESG Update

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- Continuing to monitor the evolving landscape of ESG financial products.
- Legislative Action
  - House “ESG Month” and various proposals introduced
  - Numerous state efforts

# ESG Update

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- Agency Actions:
  - **Ongoing** corporate disclosure rule pending and facing major pushback from various stakeholders.
  - “Fund Name” rule changes **finalized** in September to broaden 80 percent investments rule.
  - Separate rule regarding fund disclosure of ESG factors to participating investors is **pending**.
  - Department of Labor ESG rules for ERISA plans.

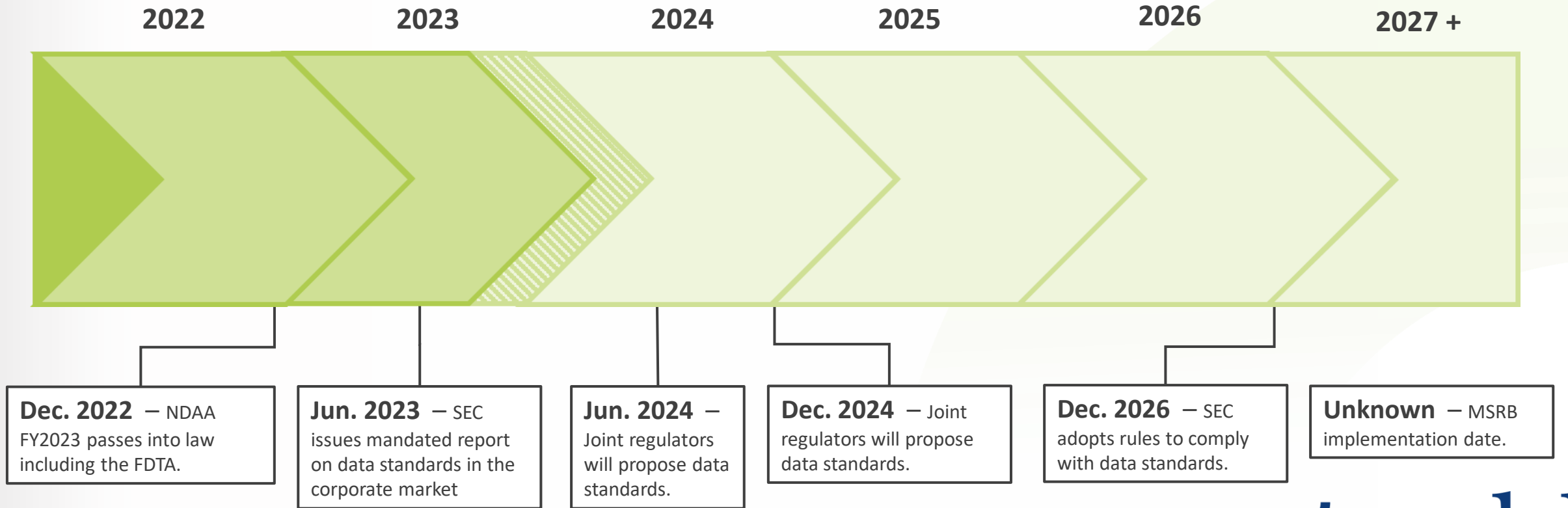


# FDTA Implementation

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- Instructs financial regulators to set data standards for various agencies that include structured data requirements
- SEC rulemaking to apply those standards to information submitted to the MSRB
- Progress so far:
  - Monthly meetings among agency data chiefs
  - Report on the use of structured data in the corporate securities market
  - Coalition formation among market groups
- Joint Coalition of municipal groups, including NAHEFFA and NABL, meeting monthly to “get smart” on terms and technical principles.

# FDTA Timeline



# Market Discussion

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- “Basel III Endgame”
  - Increases capital requirements on banks
  - Potential to raise borrowing costs economy-wide, including for municipal borrowers
  - Gross up provisions in loan agreements

# Q&A

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