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Update on State & Federal Tax Laws & Issues Impacting Municipal Finance

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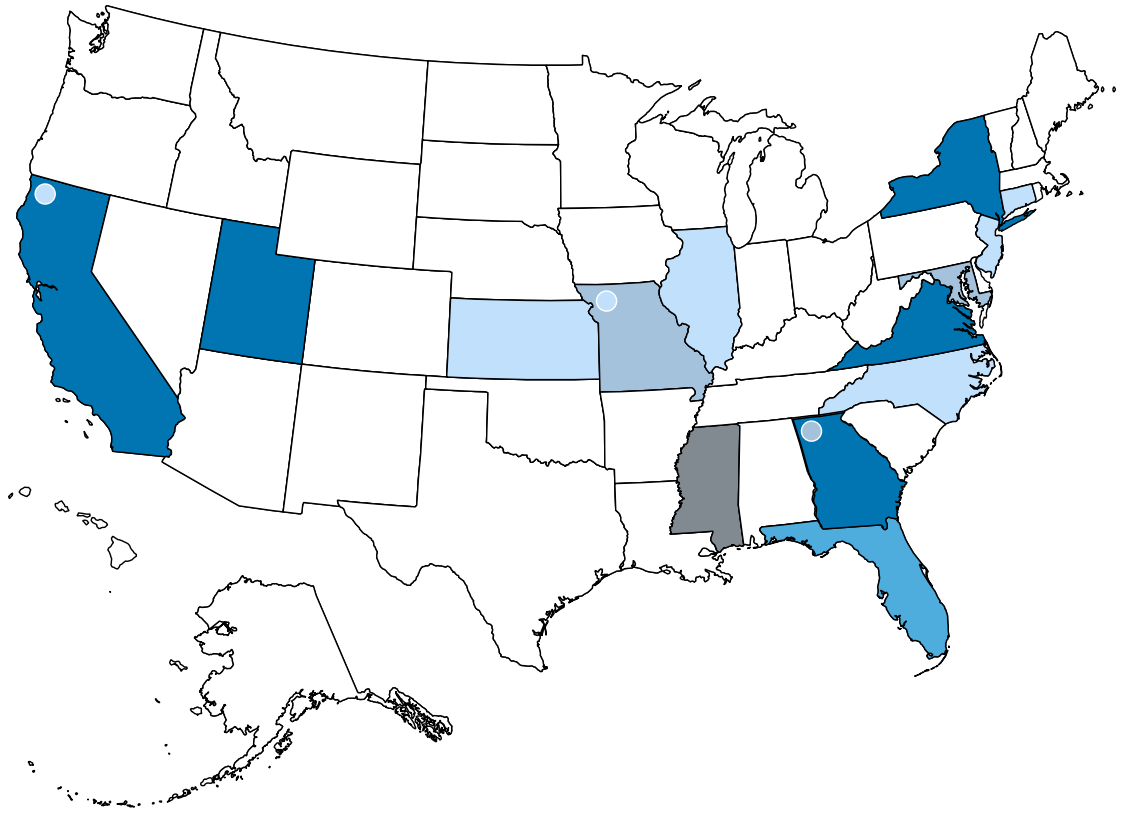
Topics of Discussion

- Truth-in-Lending Type Disclosures for Commercial Loans are on the Rise
- “Fair Access Laws”: Anti-Discrimination Firearm Legislation, Anti-Boycott Energy Legislation, and Pro- or Anti-ESG Divestment/Investing Policies
- Implications of Recent PREPA Decision for Revenue Bond Documents

Truth-in-Lending Type Disclosures for Commercial Loans are on the Rise

Current Lender Disclosure/Registration Laws



Enacted legislation

- California Financial Code § 22800 et seq. (“CA Disclosure Law”)
- Georgia Senate Bill 90 (signed 5/1/23, effective 1/1/24)
- Consolidated Laws of New York Annotated Financial Services Law §§ 801 *et seq.* (“NY Disclosure Law”)
- Utah Code Annotated § 7-27-201 *et seq.* (“UT Lender Law”)
- Va. Code Annotated § 6.2-2228 *et seq.* (“VA Lender Law”)

Legislation enrolled in Florida (House Bill 1353)

Legislation engrossed in Georgia, Maryland, and Missouri

Legislation introduced in California, Connecticut, Florida, Illinois, Kansas, Missouri, New Jersey, and North Carolina

Legislation died in Mississippi

California Lender Disclosure Law Highlights

- California Financial Code § 22800 *et seq.* ("CA Disclosure Law") and Cal. Code Regs. tit. 10, §§ 900 to 956 (*"CA Final Regulations"*) went into effect on December 9, 2022.
- Applies to commercial loans in a principal amount of $500,000 or less but at least $5,000 and includes certain lease financings
- Exempts
  - Depository institutions
  - Commercial loans secured by real property
  - True leases and lease financings subject to termination by lessee
  - Providers who make no more than one commercial financing transaction in California in a 12-month period
  - Provider who makes five or fewer commercial financing transactions in California in a 12-month period ***that are incidental to the business of the provider relying upon the exemption***.

California Lender Disclosure Law (continued)

Required Disclosures under CA Disclosure Law

A provider must disclose to a recipient the following **at the time of extending a specific commercial financing offer to that recipient, and must obtain the recipient's signature on such a disclosure before consummating the commercial financing transaction**:

(1) The total amount of funds provided.

(2) The total dollar cost of the financing.

(3) The term or estimated term.

(4) The method, frequency, and amount of payments.

(5) A description of prepayment policies.

(6) The total cost of the financing expressed as an annualized rate *(this prong is currently required until January 1, 2024 – may be extended – we'll see)*.

New York Lender Disclosure Law Highlights

- NY CLS Fin Serv §§ 801-812 was signed into law on December 23, 2020 ("NY Disclosure Law") and requires certain commercial lenders that provide financings of $2.5 million or less (**and brokers involved in such offers**) to make certain disclosures to the recipients commencing August 1, 2023
- Applies where a recipient's business is principally managed or directed from the state of New York or where the recipient (if a natural person) is a legal resident of the state of New York
- Applies to loans, leases and other forms of commercial financing
- **Exempts these financial institutions:**
  - a bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate or charter issued by the United States, the State of New York or any other state, district, territory, or commonwealth of the United States that is authorized to transact business in the State of New York;
  - a federally chartered savings and loan association, federal savings bank or federal credit union that is authorized to transact business in the State of New York; or
  - a savings and loan association, savings bank or credit union organized under the laws of the State of New York or any other state that is authorized to transact business in the State of New York; and
  - any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by a "financial institution".

New York Lender Disclosure Law Exemptions (continued)

Exemptions from NY Disclosure Law

- a commercial financing transaction secured by real property;
- a lease as defined in section 2-A-103 of the uniform commercial code (true leases)
- any person or provider who makes no more than five (5) commercial financing transactions in the State of New York in a twelve-month period
- an individual commercial financing transaction in excess of $2,500,000

New York Lender Disclosure Law (continued)

Disclosure Requirements for Closed-end Commercial Financings under NY Disclosure Law

At the time a provider extends an offer for a closed-end commercial financing, the provider must disclose the following (according to formatting prescribed by the Superintendent of NYDFS):

- The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees are deducted;
- The finance charge;
- The APR expressed as a yearly rate inclusive of fees and finance charges that cannot be avoided;
- The total repayment amount (i.e. disbursement amount plus finance charge);
- The term of the financing;
- The payment amounts: (i) if fixed, then the payment amounts and frequency, and if the term is longer than one month, the average monthly payment amount; or (ii) if variable, then a full payment schedule or a description of the method used to calculate the amounts and frequency of payments, and if the term is longer than one month, the estimated average monthly payment amount;

New York Lender Disclosure Law (continued)

Disclosure Requirements for Closed-end Commercial Financings under NY Disclosure Law (continued)

- A description of all other potential fees and charges that can be avoided by the recipient (i.e. late payment fees, returned payment fees, etc.)
- Providers (i.e., financers) must disclose the compensation paid to brokers in writing (See Section 600.21(f) of the NY Regulations.
- Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provide must disclose:
  - whether the recipient would be required to pay any finance charges other than interest accrued since their last payment, and if so the provide must disclose the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and
  - whether the recipient would be required to pay any additional fees not already included in the finance charge.
- A description of collateral requirements or security interests, if any.

New York Lender Disclosure Law (continued)

Disclosure Requirements for Renewal Financing under NY Disclosure Law

- Certain other disclosures are also required if as a condition of obtaining the commercial financing, the provider requires the recipient to pay off the balance of an existing commercial financing from the same provider

Disclosure Requirements for Other Forms of Financing under NY Disclosure Law

- Certain other disclosures are also required for a commercial financing that doesn't fit into an open-end financing, closed-end financing, sales-based financing, or factoring transaction classification but otherwise meets the definition of commercial financing.

Penalties

(a) If the superintendent of NYDFS finds that a provider has violated the provisions of the NY Disclosure Law or related rules or regulations, the provider shall be ordered to pay a civil penalty for each violation a sum not to exceed $2,000 for each violation (or where such violation is willful $10,000 for each violation).

(b) If superintendent of NYDFS finds that a provider has knowingly violated the NY Disclosure Law, the superintendent may order additional relief, including, but not limited to, restitution or a permanent or preliminary injunction on behalf of any recipient affected by the violation.

Utah Lender Registration and Disclosure Law

- The Utah commercial financing statutory requirements went into effect on January 1, 2023. Utah Code Ann. § 7-27-202(4) ("UT Lender Law")
- The UT Lender Law specifically requires a provider to register with the Utah regulator (Utah Code Ann. § 7-27-201).
- The UT Lender Law specifically requires a provider to provide disclosures in connection with a commercial financing transaction (Utah Code Ann. § 7-27-202).

"Provider" means a person who consummates more than five commercial financing transactions in the State of Utah during any calendar year.

"Commercial financing transaction" means a business purpose transaction:

- under which a person extends a business a commercial loan or a commercial open-end credit plan; or
- that is an accounts receivable purchase transaction.

"Business" means a private enterprise carried on for the purpose of gain or economic profit.

"Business purpose transaction" means a transaction from which the resulting proceeds that a business receives are:

- provided to business; or
- intended to be used to carry on the business.

Georgia Lender Disclosure Law

- The Georgia commercial financing disclosure statutory requirements under SB 90 go into effect on January 1, 2024 ("GA Lender Law")
- The GA Lender Law specifically requires a provider to provide disclosures in connection with a commercial financing transaction.

"Provider" means a person who consummates more than five commercial financing transactions in the State of Georgia during any calendar year.

"Commercial financing transaction" means a business purpose transaction:

- under which a person extends a business a commercial loan or a commercial open-end credit plan; or
- that is an accounts receivable purchase transaction.

"Business" means a private enterprise carried on for the purpose of gain or economic profit.

"Business purpose transaction" means a transaction from which the resulting proceeds that a business receives are:

- provided to business; or
- intended to be used to carry on the business.

Virginia Lender Registration and Disclosure Law

- The registration requirements found in Virginia's statute went into effect on November 1, 2022. Va. Code Ann. § 6.2-2230 ("VA Lender Law").
- The VA Lender Law requires a provider or broker to make certain disclosures at the time of extending a specific offer of "sales-based financing." Va. Code Ann. § 6.2-2231.
- The VA Lender Law defines sales-based financing as a transaction repaid by the recipient to the provider over time as a percentage of sales or revenue in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Va. Code Ann. § 6.2-2228.
- Based on the definition of sales-based financing, Virginia's registration and disclosure requirements apply only to merchant cash advance providers. If none of the lender's activities involve sales-based financing or merchant cash advances, it would appear that the VA disclosure requirements should not apply.
- On or before November 1, 2022, every sales-based financing provider and sales-based financing broker (i) must register with the Bureau of Financial Institutions (BFI) which is a regulatory division of the Virginia State Corporation Commission ("Commission") in accordance with procedures established by the Commission and (ii) unless such provider or broker is organized under the laws of Virginia or otherwise is not required to obtain authority to transact business in the Commonwealth as a foreign entity, must obtain authority to transact business in the Commonwealth of Virginia in accordance with the provisions of Title 13.1.

Florida Lender Disclosure Bill HB 1353

- The Florida commercial financing disclosure bill under HB 1353 is enrolled and awaits Governor's signature and will apply on or after January 1, 2024
- HB 1353 specifically requires a provider to provide disclosures in connection with a commercial financing transaction.

"Provider" means a person who consummates more than five commercial financing transactions in the State of Florida during any calendar year.

"Commercial financing transaction" means a commercial loan, an accounts receivable purchase transaction, or a commercial open-end credit plan to the extent the transaction is also a business purpose transaction. As used in this subsection, the term **"business purpose transaction"** means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not to be used for personal, family, or household purposes.

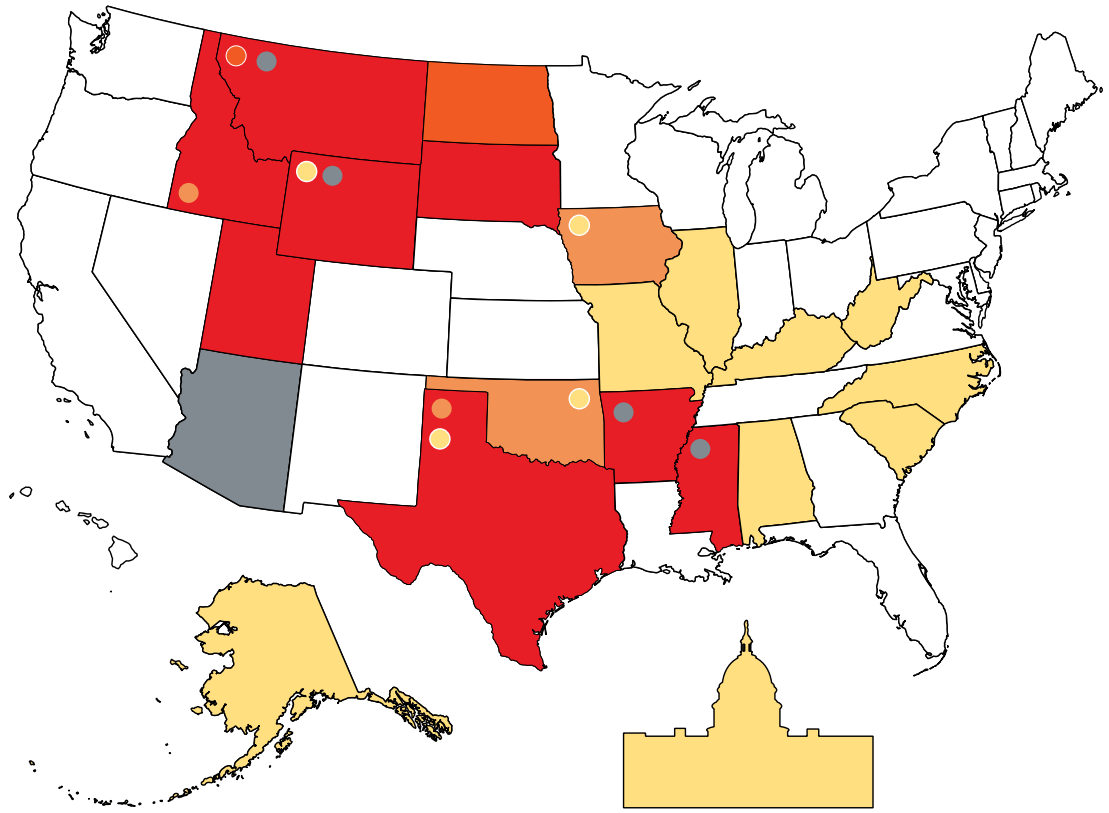
"Commercial loan" means a loan to a business, whether secured or unsecured.

"Business" means an individual or a group of individuals, a sole proprietorship, a corporation, a limited liability company, a trust, an estate, a cooperative, an association, or a limited or general partnership engaged in a business activity.

Various disclosure requirements, restrictions regarding brokers and penalties.

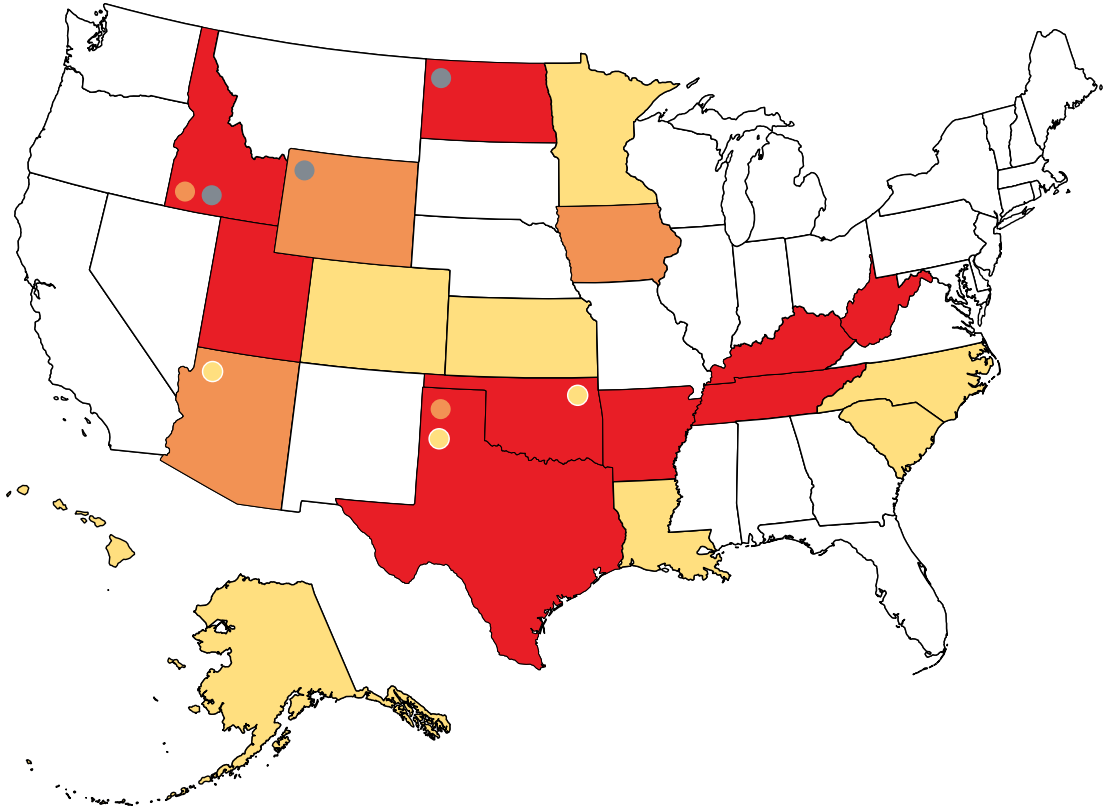
“Fair Access Laws” Anti-Discrimination Firearm Legislation, Anti-Boycott Energy Legislation, and Pro- or Anti-ESG Divestment/Investing Policies

Anti-Discrimination Firearm Legislation



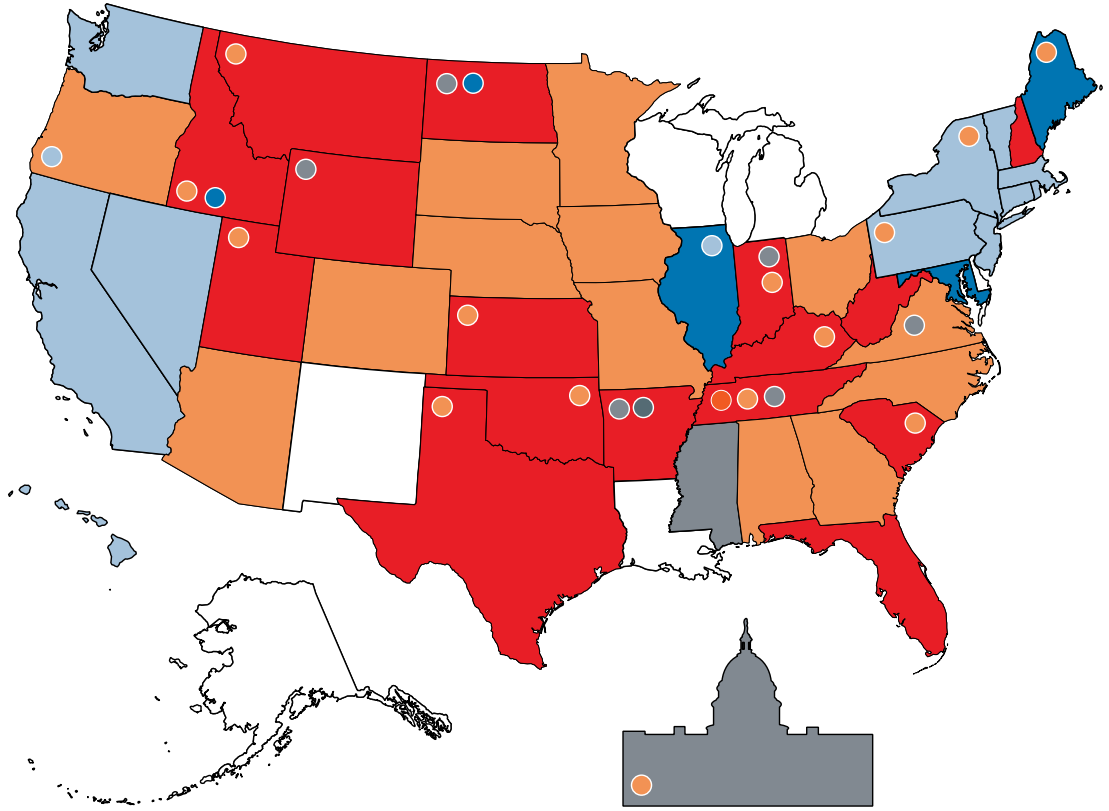
- Legislation enacted in Texas (2021), Wyoming (2021), Arkansas (2023), Idaho (2023), Mississippi (2023), Montana (2023), Utah (2023), and South Dakota (2023 Executive Order)
- Legislation enrolled in North Dakota and Montana
- Legislation engrossed in Kentucky, Idaho, Iowa, Oklahoma, and Texas
- Legislation introduced in Alabama, Alaska, Illinois, Iowa, Missouri, North Carolina, Oklahoma, South Carolina, Texas, West Virginia, Wyoming, and U.S. Congress
- Legislation vetoed in Arizona; died/did not pass in Arkansas, Mississippi, Montana, and Wyoming

Anti-Boycott Energy Legislation



- Legislation enacted in Texas (2021), North Dakota (2021 & 2023), Kentucky (2022), Oklahoma (2022), Tennessee (2022), West Virginia (2022), Arkansas (2023), Idaho (2023), North Dakota (2023), and Utah (2023)
- Legislation engrossed in Arizona, Idaho, Iowa, Texas, and Wyoming
- Legislation introduced in Alaska, Arizona, Colorado, Hawaii, Kansas, Louisiana, Minnesota, North Carolina, Oklahoma, South Carolina, and Texas
- Legislation died/did not pass in Idaho, North Dakota, and Wyoming

Pro- or Anti-ESG Divestment/Investing Policies



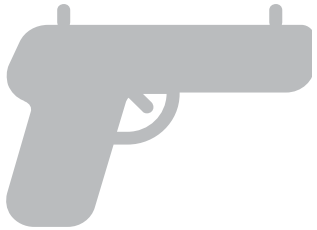
Actions Promoting Integration of ESG Considerations in Investment Decisions

- Legislation enacted in Illinois (2019), Maine (2021), North Dakota (2021), Idaho (2022), and Maryland (2022)
- New legislation engrossed or introduced in California, Connecticut, Hawaii, Illinois, Massachusetts, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington
- Legislation died in Arkansas

Actions Restricting Use of ESG Considerations in Investment Decisions

- Firearm anti-discrimination, oil & gas anti-boycott and other anti-ESG legislation enacted in North Dakota (2021 & 2023), Texas (2021), Wyoming (2021), Idaho (2023), Kansas (2023), Kentucky (2023), Oklahoma (2022), Tennessee (2022), West Virginia (2022 & 2023), Arkansas (2023), Florida (2023), Indiana (2023), Montana (2023), New Hampshire (Executive Order in 2023), North Dakota (2023), Utah (2023), and West Virginia (2023
- Legislation engrossed or introduced in Alabama, Arizona, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Virginia, West Virginia, and United States Congress
- Legislation vetoed in United States Congress; died/did not pass in Arkansas, Indiana, Mississippi, North Dakota, Tennessee, Virginia, and Wyoming

Firearms (only) Anti-Discrimination Statutes & Executive Order



Texas Firearms Anti-Discrimination Statute
SB 19. (Tex. Gov't Code Ann. § 2274) – effective September 1, 2021

South Dakota Firearms Anti-Discrimination Executive Order
South Dakota Executive Order 2023-24 effective May 14, 2023

Montana Firearms Anti-Discrimination Statute
HB 356 effective October 1, 2023

Wyoming Firearms Anti-Discrimination Statute
WY HB 236 (Act 87) effective July 1, 2021

Texas Firearms Anti-Discrimination Statute

SB 19. (Tex. Gov't Code Ann. § 2274) – effective September 1, 2021

A governmental entity (i.e.**state entity or political subdivision)** may not enter into **a contract of $100,000 or more with a company with 10 or more full-time employees** for the purchase of goods and services that **to be paid wholly or partly from public funds of the governmental entity** unless the contract contains a written verification from the company that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
(ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Exempts a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (a) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (b) **for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association**.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit—but the term does not include a sole proprietorship.

Texas AG also requires standing letter certifications if Texas AG approval is required.

South Dakota Firearms Anti-Discrimination Executive Order

South Dakota Executive Order 2023-24 effective May 14, 2023

The executive order provides that no South Dakota **executive branch agency** may execute a **contract of $100,000 or more with a contractor (i.e. financial institution) that discriminates against a firearm-related entity**. A contractor (a) must certify in writing that it has not discriminated against a firearm-related entity and that (b) must timely notify the contracting executive branch agency in writing if at any time after making the certification the contractor engages in such discrimination. An executive branch agency may rely on a contractor's certification that it does not discriminate against firearm entities. Each contract must expressly include a provision that allows an executive branch agency to terminate the contract if it becomes clear that the contractor's certification is false or the contractor acts in a way that makes the certification false after it is made, and the executive branch agency must terminate the contract by giving the contractor written notice and opportunity to be heard and opportunity to become compliant by ceasing any discrimination against a firearm-related entity.

Financial institution means a bank, insurance company, credit union, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment, and currency exchange and that has $100 billion or more in total assets.

Similar carveout as Texas: excludes a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (a) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (b) for **any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association**.

Montana Firearms Anti-Discrimination Statute

HB 356 effective date October 1, 2023

HB 356 essentially tracks Texas SB 19 and provides that a governmental entity (i.e. **state entity or political subdivision**) may not enter into **a contract of $100,000 or more with a company with 10 or more full-time employees** for the purchase of goods and services that **to be paid wholly or partly from public funds of the governmental entity** unless the contract contains a written verification from the company that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Similar carveout as Texas: excludes a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (a) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (b) for **any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association**.

Company means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit—but the term does not include a sole proprietorship.

Wyoming Firearms Anti-Discrimination Civil Action Statute

WY HB 236 (Act 87) effective July 1, 2021

HB 236 provides that a financial institution shall not discriminate against a firearm entity because the firearm entity supports or is engaged in the lawful commerce of firearms, firearm accessories or ammunition products.

Under HB 236 a financial institution means a payment processor, a bank, savings and loan association, trust company, state chartered credit union or a national banking association.

HB 236 does not apply to a financial institution that has a written policy prohibiting the institution from discriminating against firearm entities.

If a person is injured from a violation of the statute such person may bring a civil action against the financial institution. Potential damages received upon a successful action include any of the following: (i) actual and compensatory damages, (ii) treble damages, (iii) punitive or exemplary damages, (iv), injunctive relief and (v) any other appropriate civil relief.

The attorney general may also file a civil action. The attorney general may request the court to (i) provide a declaratory judgement, (ii) enjoin any act or practice that violates the statute by issuing a temporary restraining order, preliminary or permanent injunction, (iii) impose a civil penalty that does not exceed $20,000 per violation.

The attorney general is to submit the name of the financial institution that has violated the statute to the governor and request that the state terminate any business relationship with the financial institution.

The remedies and actions available under the statute are not applicable to a financial institution that has a written policy prohibiting the institution from discriminating against firearm entities.

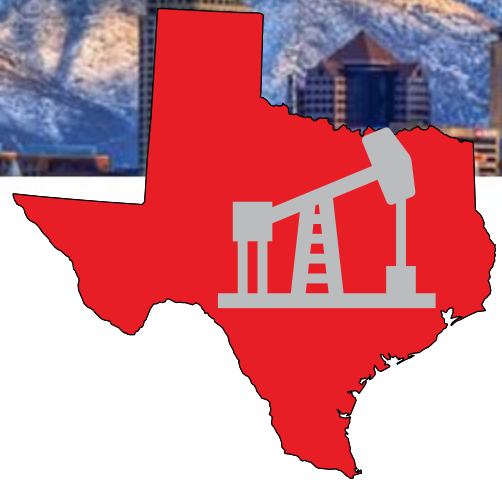
Anti-Boycott Energy (only) Statutes

Texas Anti-Boycott Energy Statute
SB 13 (Tex. Gov't Code Ann. § 2274 and Tex. Gov't Code Ann. § 809.001 et. seq.) – effective September 1, 2021

Oklahoma Anti-Boycott Energy Statute
OK HB 2034 (74 Okl. St. 12001 to 12006) effective May 9, 2022

Kentucky Anti-Boycott Energy Statute
SB 205 (Chapter 41 41.470-.480, amends 286.2-105) effective July 14, 2022

West Virginia Treasurer Energy Anti-Boycott Statute
SB 262 effective June 10, 2022



Texas Anti-Boycott Energy Statute

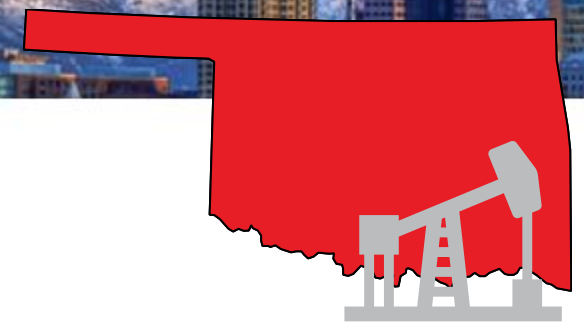
SB 13 (Tex. Gov't Code Ann. § 2274 and Tex. Gov't Code Ann. § 809.001 et. seq.) – effective September 1, 2021

SB 13 provides that a governmental entity may not enter into a **contract (with value of $100,000 or more to be paid wholly or partly from public funds) with a company (that employs 10 or more full-time employees)** for the purchase of goods and services unless the contract contains a written verification from the company that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of the contract.

Exception if governmental entity determines the requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

In addition, SB 13 requires the state comptroller to maintain a list of all financial companies that boycott energy companies and update it no more often than quarterly. The state comptroller may in its judgment rely on publicly available information in maintaining the list and may request written verification from companies that they do not boycott energy companies without further investigation. If a financial company is found to be boycotting energy companies, it has 90 days to cease boycotting energy companies. Otherwise, there is a detailed process for state governmental entities (various Texas retirement systems and the permanent school fund) to divest from all securities of such company. 50% of such securities must be sold or divested within 180 days of notification that such financial company will be on the state comptroller's list and 100% of such securities must be sold and divested within 360 days.

For purposes of SB 13 **financial company** means a publicly traded financial services, banking or investment company. **Boycott energy company** means **without an ordinary business purposes** terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (i) is involved with fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond appliable federal or state law or (ii) does business with a company described in (i) above.



Oklahoma Anti-Boycott Energy Statute

OK HB 2034 (74 Okl. St. 12001 to 12006) effective May 9, 2022

Essentially tracks the Texas SB 13 statute with respect to types of contract subject to written verification from company that it (i) does not boycott energy companies and (ii) will not boycott energy companies during the term of the contract. Similarly has an "**ordinary business purpose**" exception for boycotting energy companies.

In addition, HB 2034 requires the State Treasurer to maintain a list of all financial companies that boycott energy companies and includes a divestment process similar to the Texas Comptroller process with various differences.

Kentucky Anti-Boycott Energy Statute

SB 205 (Chapter 41 41.470-.480, amends 286.2-105) effective July 14, 2022

Essentially tracks the Texas SB 13 statute with respect to types of contract subject to written verification from company that it (i) does not boycott energy companies and (ii) will not boycott energy companies during the term of the contract. Similarly has an "**ordinary business purpose**" exception for boycotting energy companies and exception if the governmental entity determines the requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

In addition, SB 205 requires the Treasurer of Commonwealth to maintain a list of all financial companies that boycott energy companies and includes a divestment process similar to the Texas Comptroller process with certain differences, including state governmental entity definition is broader and divestment timing/process differs.

West Virginia Treasurer Energy Anti-Boycott Statute

SB 262 effective June 10, 2022

The State Treasurer:

- **is *authorized*** to maintain a list of financial institutions that are engaged in a boycott of energy companies (i.e. fossil fuel companies)
- **is *authorized*** to disqualify restricted financial institutions from any bidding or selection process for a banking contract
- **may** refuse to enter into a banking contract with a restricted financial institution based on its restricted financial institution status
- **may** require, as a term of any banking contract, an agreement by the financial institution not to engage in a boycott of energy companies for the duration of the contract.
- shall consider and may rely on these factors in determining whether a financial institution is engaged in a boycott of energy companies:
  - financial institution's certification that it is not engaged in a boycott of energy companies;
  - publicly available statements or information made by the financial institution, including statements by a member of a financial institution's governing body, an executive director of a financial institution, or any other officer or employee of the financial institution with the authority to issue policy statements on behalf of the financial institution; or
  - information published by a state or federal government entity.
- cannot rely solely on the following information:
  - statements or complaints by an energy company
  - media reports of a financial institution's boycott of energy companies

West Virginia Treasurer Energy Anti-Boycott Statute

(continued)

For purposes of SB 262:

Financial institution means a bank, national banking association, non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, or a savings bank.

Boycott of energy companies means **without a reasonable business purpose**, refusal to deal with a company, termination of business activities with a company, or another action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy; (B) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (C) does business with a company that engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy.

Reasonable business purpose includes any purpose directly related to:

(A) Promoting the financial success or stability of a financial institution;

(B) Mitigating risk to a financial institution;

(C) Complying with legal or regulatory requirements; or

(D) Limiting liability of a financial institution

Combined Firearms & Energy (& more) Statutes

Utah Anti-Boycott Statute (Protects companies involved in fossil fuel-based energy, timber, mining, agriculture or firearms, or that fail to meet environmental standards, or that do not facilitate access to abortion or sex characteristic surgical procedures)
S.B. 97 (Amends Section 63G-27-102) effective May 3, 2023

Utah Boycotted Companies Civil Action Statute
HB 449 effective May 3, 2023

Arkansas Energy, Fossil Fuel, Firearms and Ammunition Industries Anti-Boycott Statute
AR SB 62 (Act 611) Approved April 11, 2023 (Effective 90 days after the end of regular session, i.e. July 31, 2023)

Utah Anti-Boycott Various Statute

S.B. 97 (Amends Section 63G-27-102) effective May 3, 2023

S.B. 97 provides that a public entity (i.e. **state or a political subdivision**) may not enter into **a contract with a total value of $100,000 or more with a company with 10 or more full-time employees** to acquire or dispose of a good or service unless the contract includes a written certification that the company is not currently engaged in (i) a boycott of the State of Israel **or an economic boycott**, (ii) the Company agrees not to engage in a boycott of the State of Israel for the duration of the contract and (iii) **the company agrees to notify the public entity if the company begins engaging in an economic boycott**. An economic boycott under S.B. 97 generally means, **without an ordinary business purpose**, refusing to deal, terminating business activities or limiting commercial relations with a boycotted company or a company that does business with a boycotted company.

Ordinary business purpose means a purpose that is related to business operations and does not include a purpose that is solely related to furthering social, political, or ideological interests.

Company means a corporation, partnership, limited liability company, or similar entity, and includes any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of an such an entity.

Under S.B. 97 the concept of boycotted company and its purpose of business goes further than firearms. **Boycotted company** means a company that (i) is involved in **fossil fuel-based energy, timber, mining, or agriculture**, (ii) is involved in the **manufacture, distribution, sale or use of firearms**; (iii) **does not meet or commit to meet environmental standards**, or (iv) **does not facilitate or commit to facilitate access to abortion or sex characteristic surgical procedures.**

Exceptions: S.B. 97 does not prohibit a public entity from entering into a contract with a company that engages in an economic boycott if:

(i) there is no economically practicable alternative available to the public entity to: (a) acquire or dispose of the good or service; or (b) meet the public entity's legal duties to issue, incur, or manage debt obligations, or deposit, keep custody of, manage, borrow, or invest funds; or

(ii) the company engages in the economic boycott to comply with federal law.

Utah Boycotted Companies Civil Action Statute

HB 449 effective May 3, 2023

HB 449 prohibits a company from coordinating with another to intentionally destroy certain companies by eliminating the viable options for the companies to obtain a product or service, by providing the option for a **boycotted company** to bring a civil action against a company that coordinates or conspires with another company to eliminate the viable options for the boycotted company to obtain the product or service.

Excludes "ordinary business purpose" from boycott actions.

Company means a corporation, partnership, limited liability company, or similar entity, and includes any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of an such an entity.

Boycotted company means a company that (i) engages in, facilitates or supports the manufacture, import, distribution, advertising, sale, or lawful use of a firearm, ammunition, or another component or accessory of a firearm or ammunition; or (ii) does not commit to meet: (a) environmental, social, or governance criteria in that the company engages in the exploration, production, utilization, transportation, sale or manufacture of fossil fuel-based or nuclear energy, timber, mining or agriculture or (b) environmental standards including those relating to greenhouse gas emissions.

A boycotted company who brings an action under this statute may request injunctive relief, attorneys fees and damages (but cannot recover damages from governmental entities).

First Amendment Safe Harbor: HB 449 does not prohibit a person from engaging in an activity to the extent the activity is regulated or supervised by state government officers or agencies under the laws of the State of Utah or federal government officers or agencies under the laws of the United States.

Arkansas Energy, Fossil Fuel, Firearms and Ammunition Industries Anti-Boycott Statute

AR SB 62 (Act 611) Approved April 11, 2023 (Effective 90 days after the end of regular session, i.e. July 31, 2023)

Act 611 prohibits a public entity (i.e. **state or local government entity**) to enter into a **contract of $75,000 or more** with a company unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of energy, fossil fuel, firearms, and ammunition industries. Excludes boycotts for an ordinary business purpose.

Ordinary business purpose means a purpose that is related to business operations and does not include a purpose that is solely related to furthering social, political, or ideological interests.

There is an exemption if the company's offer to provide the goods or services is at least twenty percent (20%) less than the lowest certifying business. **Act 611 provides that the definition of company does not include a financial services provider as defined in Act 411.**

Company means a sole proprietorship, organization association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.

Arkansas Energy, Fossil Fuel, Firearms and Ammunition Industries Anti-Boycott Statute (continued)

Financial services provider means an entity regulated by the State Bank Department, State Securities Department, or a similar federal regulatory agency, engaged in or transacting business in this state, including without limitation:

(i) A state or national bank or trust company;

(ii) A state or federal savings and loan association;

(iii) A state or federal credit union;

(iv) A building and loan association;

(v) A mortgage banker, mortgage broker, loan officer, or mortgage servicer under the Fair Mortgage Lending Act, 23-39-501 et seq.; or

(vi) An entity that provides money services under the Uniform Money Services Act, 23-55 101 *et seq*.

Financial services provider includes any other entity that:

(i) Holds and receives deposits, savings, and share accounts;

(ii) Issues certificates of deposit; or

(iii) Provides to its customers any deposit accounts that the funds are subject to withdrawal by check, instrument, order, or electronic means to make third-party payments, including the provision of financial technology services.

Depository Services or Divestment Anti-Discrimination Firearms/Energy Statutes

Tennessee State Depository Services Statute
SB 2649 (T.C.A. 9-4-107) effective July 1, 2022

Idaho Energy and Firearms Anti-Boycott Statute Relating to Credit Unions and Banks/State Deposits
ID HB 190 (amending Sections 26-2155 and 67-2739 of Idaho Code) effective July 1, 2023

Arkansas Divestment ESG Discrimination Oversight Committee Statute
AR HB 1307 (Act 411) Approved March 30, 2023, as amended by AR HB 1845 (Act 760) Approved April 12, 2023, (each effective 90 days after the end of regular session i.e. July 31, 2023)

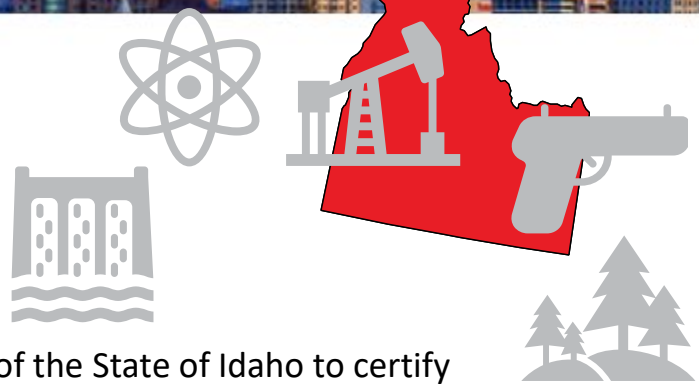
Tennessee State Depository Services Statute

SB 2649 (T.C.A. 9-4-107) effective date July 1, 2022

On or after July 1, 2022 the state treasurer shall not enter into a contract or amendment with a state depository for the state's primary cash management banking services if the state depository has a policy that prohibits financing to companies in the fossil fuel industry (unless services cannot be provided by another contractor).

"Companies in the fossil fuel industry" means entities where at least 50% of annual revenue is obtained from business operations involving natural gas, oil, kerosene, petroleum, coal, hydrocarbon product, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

Idaho Energy & Firearms & More Anti-Boycott Statute Relating to Credit Unions and Banks/State Deposits



ID HB 190 (amending Sections 26-2155 and 67-2739 of Idaho Code) effective July 1, 2023

HB 190 requires credit unions, banking corporations or national banking associations holding any deposit of funds of the State of Idaho to certify that such organization is not currently engaged in and will not as long **as they are a state depository** engage in a boycott of any individual or company that (i) engages in or supports the **exploration, production, utilization, transportation, sale or manufacture of fossil fuel based energy, timber, minerals, hydroelectric power, nuclear energy or agriculture** or (ii) engages in or supports the **manufacture, distribution, sale or use of firearms**.

Credit unions, banking corporations and national banking associations must provide this certification each year. Carveout for **reasonable business purpose** which is any purpose directly related to:

(a) Promoting the financial success or stability of a financial institution;

(b) Mitigating risk to a financial institution;

(c) Complying with legal or regulatory requirements; or

(d) Limiting liability of a financial institution

Arkansas Divestment ESG Discrimination Oversight Committee St

AR HB 1307 (Act 411) Approved March 30, 2023 (Effective 90 days after the end of regular session, i.e. July 31, 2023)

Provides for the creation of an ESG Oversight Committee (the "Oversight Committee") that determines if a financial services provider has discriminated against energy companies or firearms entities or otherwise refused to do business based on environmental, social justice, and other governance-related factors. Such evidence shall be identified and those financial services providers found to discriminate will be placed on a list compiled by the State Treasurer. The financial services provider will be placed on the list in 45 days from such determination unless within 30 days following receipt of written notice of the Oversight Committee's finding the financial services provider demonstrates that it is not discriminating against energy companies or firearm entities.

Excludes from discrimination definitions "ordinary business purpose" and also uses the term "reasonable business purpose" in describing the certification.

If a financial services provider is placed on the State Treasurers list, the State Treasurer will divest the state of all direct or indirect holdings with such financial services provider.

Arkansas Divestment ESG Discrimination Oversight Committee(continued)

Financial services provider means an entity regulated by the State Bank Department, State Securities Department, or a similar federal regulatory agency, engaged in or transacting business in this state, including without limitation:

(i) A state or national bank or trust company;

(ii) A state or federal savings and loan association;

(iii) A state or federal credit union;

(iv) A building and loan association;

(v) A mortgage banker, mortgage broker, loan officer, or mortgage servicer under the Fair Mortgage Lending Act, 23-39-501 et seq.; or

(vi) An entity that provides money services under the Uniform Money Services Act, 23-55 101 *et seq*.

Financial services provider includes any other entity that:

(i) Holds and receives deposits, savings, and share accounts;

(ii) Issues certificates of deposit; or

(iii) Provides to its customers any deposit accounts that the funds are subject to withdrawal by check, instrument, order, or electronic means to make third-party payments, including the provision of financial technology services.

Implications of Recent PREPA Decision for Revenue Bond Documents

In re Fin. Oversight, No. 17
(PREPA vs. Bond Trustee and Bondholders)
March 22, 2023

Background

- PREPA (Puerto Rico Electric Power Authority) supplies virtually all electricity consumed in the Commonwealth of Puerto Rico.
- Between 1974 and 2016 PREPA issued $8.3 billion in Bonds under the Trust Agreement at issue in this case.
- During the summer of 2014, as PREPA faced a liquidity crisis and induced its creditors, including the Bondholders, to enter into forbearance agreements.
- Bondholders agreed to refrain from exercising their rights under the Trust Agreement and PREPA affirmed the Bondholders' liens and promised to satisfy its Bond repayment obligations in all material respects.
- To the address serious fiscal emergency in the Commonwealth, Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") in 2016.
- PROMESA established an oversight board (the "Oversight Board") to develop "a method [for the Commonwealth] to achieve fiscal responsibility and access the capital markets."

Background (continued)

- On July 2, 2017, the Oversight Board filed a petition commencing a debt adjustment proceeding for PREPA under PROMESA (the "Title III Case").
- Oversight Board sued the Bond Trustee to the extent that the Bond Trustee's secured claim extended beyond amounts actually deposited into the "Sinking Fund" and other funds created under the Trust Agreement for payment of principal of and interest on the Bonds.
- PREPA bondholders argued that under the granting clauses in the trust agreement, the Bonds are secured by a security interest in all present and future revenues of PREPA, including revenues not yet collected for electricity not yet generated.
- On March 22, 2023, U.S. District Court Judge Laura Taylor Swain ruled that PREPA bondholders only have a secured claim on funds actually deposited in certain accounts established under the trust agreement for the Bonds.

Court Held

- Article 9 of the Uniform Commercial Code governs the existence, validity and perfection of security interests in PREPA's property.
- Pledge language in the granting clause, which lacks any reference to a grant of a lien or charge, is insufficient to grant bondholders a security interest in such current or future revenues:

> Now, THEREFORE, THIS AGREEMENT WITNESSETH, that . . . in order to secure the performance and observance of all the covenants, agreements and conditions . . . herein contained, **the Authority has executed and delivered this Agreement and has pledged and does hereby pledge to the Trustee the revenues of the System**, subject to the pledge of such revenues to the payment of the principal of and the interest on the 1947 Indenture Bonds (hereinafter mentioned), **and other moneys to the extent provided in this Agreement** as security for the payment of the bonds and the interest and the redemption premium, if any, thereon and as security for the satisfaction of any other obligation assumed by it in connection with such bonds, and **it is mutually agreed and covenanted by and between the parties hereto**, for the equal and proportionate benefit and security of all and singular the present and future holders of the bonds issued and to be issued under this Agreement, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one bond over any other bond, by reason of priority in the issue, sale or negotiation thereof or otherwise, **as follows:**
>
> **The Authority covenants that it will promptly pay the principal of and the interest on each and every bond issued under the provisions of this Agreement at the places, on the dates and in the manner specified herein** and in said bonds and in the coupons, if any, appertaining thereto, and any premium required for the retirement of said bonds by purchase or redemption, according to the true intent and meaning thereof. Until the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, such principal, interest and premium are payable solely from moneys in the Renewal and Replacement Fund and said moneys are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified. After the 1947 Indenture Bonds have been paid or provision has been made for their payment and the release of the 1947 Indenture, **such principal, interest and premium will be payable solely from the Revenues and said Revenues are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified**.

Court Held (continued)

- Pledge of revenues for the Bonds under the Trust Agreement is qualified by the phrase "*in the manner and to the extent hereinabove particularly specified*"
  - This qualification essentially limits the revenue pledge to the scope of the pledge to the specific grants and liens in moneys actually deposited into certain specified finds.
- Only a few sections of the Trust Agreement confer specific grants of liens, and only do so with respect to moneys actually deposited into certain specified funds.
- The language of section 928 of the Bankruptcy Code similarly refers only to "revenues acquired"—in the past-tense—and does not support the Bondholders' interpretation of that statute to the extent the Bondholders claim that it currently captures revenues not yet received by PREPA and deposited into the Funds.

ASSOCIATION FOR GOVERNMENTAL LEASING & FINANCE
THE 43RD ANNUAL AGLF CONFERENCE
THE GRAND AMERICA HOTEL SALT LAKE CITY, UT
MAY 10-12, 2023

Federal Tax Update

Presented by:

Alan Woolever, Gilmore & Bell, P.C.

May 11, 2023

Topic Overview

Reimbursement:

- History
- General Rules
- Exceptions
- Official Intent
- Tax Audits

Series 8038 Forms:

- Incomplete Returns

Renewable Energy Tax Credits:

- Inflation Reduction Act Opportunity
- Impact on State and Local Governments
- Types of Energy Projects

History of Reimbursement Rules

Pre-1993 Treasury Regulations on Reimbursement

- Reimbursement rules applied only to industrial development bonds (predecessor to current private activity bonds)
- Required a conduit Issuer to take official action demonstrating the conduit borrower's "intent to finance"
- Intent to finance established a nexus between a project cost and eventual bond issue

Pyramid Bond Concerns

- Late 1980s and early 1990s – IRS became concerned about inappropriate reimbursements in governmental bonds
- Bonds issued to reimburse projects costs paid long ago that were never intended to be financed with tax-exempt bonds
- Once reimbursement allocation made, then money could be used for any purpose (working capital)

History of Reimbursement Rules

April 15, 1991 Proposed Regulations

- Reimbursement rules would now apply to all tax-exempt bonds
- Required Issuer to declare a reasonable intent to:
  - reimburse the expenditure with proceeds of a borrowing
  - official intent must state Issuer intends to reimburse an expenditure with debt that either will or may be tax-exempt
- Major concerns that the proposed rules are overly complex and fail to take into account budgetary and financial practices of some Issuers

January 30, 1992 Interim Final Regulations

- Declaration of Intent satisfactory only if it:
  - states that the Issuer reasonably expects to reimburse an expenditure with proceeds of debt to be incurred by the Issuer; and
  - specifically states that it is a declaration of intent under the Regulations

History of Reimbursement Rules

June 18, 1993– Final Regulations

- Simplified previous detailed and complex requirements
- Allowed an official intent to take any reasonable form and set forth minimum requirements for a valid official intent
- In contrast to the Proposed Regulations and Interim Final Regulations, the Final Regulations did not require a valid official intent to include the words “to reimburse” or to cite the reimbursement regulations
- Reflected an official regulatory position that:
  - A statement that includes an intent to finance, project description and maximum dollar amount together with
  - Requirement that Issuer actually reimburse the expenditure within certain permitted time limits adequately addressed concerns regarding improper reimbursements

Reimbursement – General Rules

U.S. Treasury Regulation Section 1.150-2(d) (Excerpts)

- An allocation of tax-exempt debt proceeds treated as an expenditure on date of allocation to expenditure for governmental purpose if:
  - Not more than 60 days after payment of the expenditure the Issuer adopts a qualifying official intent
  - Allocation of proceeds to expenditure is made not later than 18 months after later of
    - Date expenditure is paid; or
    - Date the project is placed in service, but in no event more than 3 years after the expenditure is paid

Reimbursement - Exceptions

U.S. Treasury Regulation Section 1.150-2(d) (Excerpts)

- Small Issuers
  - 18-month limit changed to 3 years and 3-year max period is disregarded

- Long-term construction
  - Issuer & licensed architect or engineer certify at least 5 years necessary to complete project, then max period is changed from 3 to 5 years

Reimbursement - Exceptions

U.S. Treasury Regulation Section 1.150-2(d) (Excerpts)

- Preliminary Expenditures – Up to 20% of proceeds may be used for certain expenditures paid prior to beginning of construction
  - Architect, engineering, surveying, soil testing, etc.
  - Not land acquisition, site preparation and costs incident to beginning construction
- De Minimis – General rules don't apply to
  - Costs of issuance or
  - An amount not exceeding the lesser of $100,000 or 5% of proceeds

Reimbursement – Official Intent

U.S. Treasury Regulation Section 1.150-2(e) (Excerpts)

- Made in any reasonable form, including Issuer resolution, action by an appropriate representative of the Issuer, or specific legislative authorization for the issuance of obligations for a particular project
- Project Description
  - Must generally describe the project and maximum principal amount of debt to be issued
    - Sufficient if identifying by name and functional purpose the fund or account from which the original expenditure is paid
    - Allowed to deviate if project actually reimbursed is reasonably related in function to described project
- Reasonableness
  - Must have reasonable expectation expenditures will be reimbursed

Reimbursement - Tax Audits

Relevant Language from Issuer's Official Intent

Section 1. The [redacted] of the [redacted] finds it necessary and hereby declares its intent to borrow [redacted] for the purpose of designing, constructing, improving, renovating, repairing, replacing and equipping new and existing [redacted] sewer and drainage facilities and systems, including sewage treatment and disposal plants, sanitary sewers, and acquisition of easements and real property related thereto, and to evidence such borrowing by the issuance of sewer revenue bonds of the [redacted] in the amount of [redacted].

Reimbursement - Tax Audits

IRS Audit – Form 4564 (Excerpt)

14. Please indicate whether bond proceeds were used to reimburse expenditures under a reimbursement allocation described in §1.150-2 of the Income Tax Regulations. If so, please provide the official intent resolution or similar documentation and describe how such allocation complied with the other general operating rules for reimbursement allocations under §1.150-2.

Reimbursement - Tax Audits

IRS Audit – Form 4564 (Excerpt)

3. According to Section 2.2(i) of the Tax Certificate, Ordinance No. [redacted] adopted January 12, 2012, declared the intent of [redacted] to finance the Financed Facility with tax-exempt bonds and to reimburse [redacted] for expenditures made for the Financed Facility prior to the issuance of the Bonds. Please explain to us where in Ordinance No. [redacted] declared its intent to reimburse [redacted] for expenditures made for the Financed Facility.

Series 8038 Forms – Incomplete Return

[redacted]

Taxpayer identification number: [redacted]
Tax period: Oct. 31, 2022
Form: 8038G
Document locator number: [redacted]

Dear Taxpayer:

We received the form you filed for the tax period above and need more information. Send only the information we're requesting. Don't send a copy of your return unless the information we've requested changes your original return.

Your return wasn't signed. Sign and return the declaration at the end of this letter. The declaration will become part of the return.

We don't consider your return filed or complete until we have all the information we need to process it. The date we receive the requested information is the date we consider your return filed.

INCOMPLETE RETURN - IRC SECTION 6652

Series 8038 Forms – Incomplete Return

The law provides a penalty of $20 a day for filing an incomplete return. The maximum penalty may be as much as $10,000, or 5% of the gross receipts for the year, whichever is less. If your organization has gross receipts exceeding $1,000,000, the law provides a penalty of $100 a day for filing an incomplete return. The maximum penalty may be as much as $50,000. The amounts in this paragraph will be increased by inflation adjustments as required by law.

To avoid penalties, we must receive your complete and accurate return within 10 days from the date of this letter.

We listed missing or incomplete information found on your return. However, we may not have identified everything. Tell us if you need to correct other information on the return.

Find tax forms, instructions, or publications by visiting www.irs.gov/forms or calling 800-TAX-FORM (800-829-3676).

If you have questions, you can call 877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific Time).

Series 8038 Forms – Incomplete Return

U.S. Treasury Regulation Section 1.149(e)-1(d) (Excerpts)

Completed form. For purposes of this section:

> ***Good faith effort.*** A Series 8038 Form is treated as completed if the Issuer has made a good faith effort to complete the form (taking into account the instructions to the form).
>
> ***Information.*** In general, information reporting forms filed pursuant to this section must be completed on the basis of available information and reasonable expectations as of the date the issue is issued. Forms that are filed on a consolidated basis pursuant to paragraph (c)(2)(i)(B) of this section, however, may be completed on the basis of information readily available to the Issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

Series 8038 Forms – Incomplete Return

Internal Revenue Code Section 6652(c)

RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS
(1) ANNUAL RETURNS UNDER SECTION 6033(A)(1) OR 6012(A)(6)

(A) Penalty on organization In the case of—
(i) a failure to file a return required under section 6033(a)(1) (relating to returns by exempt organizations) or section 6012(a)(6) (relating to returns by political organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or
(ii) a failure to include any of the information required to be shown on a return filed under section 6033(a)(1) or section 6012(a)(6) or to show the correct information, there shall be paid by the exempt organization $20 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of $10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under section 6033(a)(1) or section 6012(a)(6) for such year, in applying the first sentence of this subparagraph, the amount of the penalty for each day during which a failure continues shall be $100 in lieu of the amount otherwise specified, and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000.

Series 8038 Forms – Incomplete Return

Practical Impact – Practice Tips

- Doesn't matter what Code Sections 149 and 6652 provide
- Issuer received the letter so someone must spend time and effort to respond
- Response must be timely or could cause additional problems with the IRS
  - Now relying on any number of individuals to timely review mail and emails, contact others and address issue
    - Folks are busy, out of office, on vacation
    - Not paying attention or short attention span
- Should not be dismissed as one-off exception

Renewable Energy Direct Pay Tax Credits

- New Opportunity from the “Inflation Reduction Act of 2022”
- Fundamental change for governmental, 501(c)(3), tribal governments
- Historically renewable projects driven by federal & state tax incentives
  - Must pay tax and have or anticipate a federal tax liability to benefit
    - Tax Credits, Depreciation Deduction and Related Benefits
  - Resulted in private ownership to fully capture federal tax benefits
- Qualifying tax-exempt entities can elect to receive a direct payment
  - Similar to a grant

Renewable Energy Direct Pay Tax Credits

- What this means for State and Local Governments
  - Municipal ownership and control over renewable energy projects
    - Private ownership no longer required to take advantage of tax credits
  - Subsidized Project Costs
    - A portion of the cost of the project can be subsidized through the receipt of the investment or production tax credit subsidies
  - Tax-Exempt Financing
    - Can combine tax-exempt financing and direct pay tax credits to further subsidize project costs
    - Amount of direct pay tax credit reduced by lesser or 15% or portion of project financed on tax-exempt basis
  - Direct Pay Gross Up to Offset Impact of Sequestration
    - Payment increased by 6.0445% to offset expected impact of mandatory sequestration

Renewable Energy Direct Pay Tax Credits

- Types of Projects:
  - Solar
  - Small wind energy
  - Energy storage (batteries)
  - Fiber-Optic Solar
  - Waste Energy Recovery
  - Biogas
  - Fuel Cells
  - Combined Heat and Power
  - Microgrid Controllers
  - Geothermal
  - Heat Pump

Renewable Energy Direct Pay Tax Credits

- Much to be discussed during 1:45 Session
  - Education & Innovate Around IRA
    - Jeffrey Elliott, President, The Huntington Bank
    - Charles Zitnik, Director, D.A. Davidson & Co.
    - Neal Skiver, Senior Vice President, LVL Finance, LLC
    - Heath Martin, Partner, Chapman & Cutler
    - Brian DePonte, Vice President, Municipal Operations, Key Government Finance