



The Battle Over BABs

Extraordinary Redemptions of
Build America Bonds

Brief History of Build America Bonds (BABs)

- In 2009, in response to the financial crisis, Congress passed the American Recovery and Reinvestment Act (the “ARRA”), which included a new program meant to incentivize infrastructure investments by state and local governments and increase federal tax revenues – the Build America Bonds program (the “BAB Program”).
- Section 1531 of ARRA authorized either refundable credits (“Direct Subsidy BABs” or “Direct Payment BABs”) or tax credits (“Tax Credit BABs”) to state and local governments that issued BABs, which were subsidized to lower the cost of borrowing for state and local governments.
- The BAB Program was codified in newly created §§ 54AA and 6431 to the Internal Revenue Code of 1986, as amended (the “Code”).
- Under the BAB Program, state and local governments that chose to issue Direct Subsidy BABs issued taxable bonds instead of their normal tax-exempt bonds through an irrevocable election that the bonds would be taxable, and in exchange for paying the higher interest rates on taxable bonds, the issuers were to receive federal refunds (“BAB subsidy payments”) in an amount equal to 35% of the interest payments on the bonds.
- In reliance on the federal government’s commitment to provide these BAB subsidy payments, state and local governments issued over \$181 billion in taxable Build America Bonds.
- The ability to issue Build America Bonds under the BAB Program expired December 31, 2010.

Sequestration

- Subsequent to the enactment of the BAB Program and after all Build America Bonds were issued, Congress reinstated and amended the Budget and Emergency Deficit Control Act of 1985 through the Budget Control Act of 2011. The Budget Control Act required automatic reductions of certain government spending through sequestration, which “refer[s] to or mean[s] the cancellation of budgetary resources provided by **discretionary appropriations** or **direct spending** law.”
- “Direct spending” refers to “budget authority provided by law other than appropriation Acts”; “entitlement authority” and “the Supplemental Nutrition Assistance Program.”
- Although several programs with payment obligations are specifically exempted from sequestration, the BAB Program is not listed among them.
- However, no BAB subsidy payments were actually reduced as result of sequestration until Congress later passed the American Taxpayer Relief Act of 2012, which required the implementation of the sequestration provisions “[n]otwithstanding any other provision of law.”
- In 2013, the Office of Management and Budget (“OMB”), the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) determined that the inclusion of this new language made BAB subsidy payments subject to mandatory budget sequestration and stopped making full subsidy payments under the BAB Program.
- Congress has extended sequestration through 2031.
- The impact of BAB subsidy payment sequestration on state and local governments has been estimated at \$2.7 billion.

Fiscal Year	Statutory BAB Subsidy Rate	Sequestration Rate	Effective BAB Subsidy Rate
2021-2031	35%	5.7%	33.01%
2020	35%	5.9%	32.94%
2019	35%	6.2%	32.83%
2018	35%	6.6%	32.69%
2017	35%	6.9%	32.59%
2016	35%	6.8%	32.62%
2015	35%	7.3%	32.45%
2014	35%	7.2%	32.48%
2013	35%	8.7%	31.96%

Extraordinary Redemption Provisions (ERP)

- Most Build America Bonds were issued with optional redemption provisions which allow the bonds to be called by the issuer at either a make-whole price or, if an “Extraordinary Event” has occurred, for extraordinary optional redemption at par or, in many cases, a present value calculation of the remaining payments discounted at a comparable Treasury Rate + 100bps.
- What constitutes an “Extraordinary Event” can vary greatly from deal to deal.
- The ERP language included in each deal must be carefully analyzed to determine whether an “Extraordinary Event” has occurred under the specific language included in that deal.
- In the current market, Build America Bonds trade at a premium so the ability to redeem them at less than a make-whole price could result in significant savings for issuers and significant losses for investors.
- According to Barclay’s, up to \$110 Billion in outstanding Build America Bonds have imbedded ERPs.
- According to Appleton Partners Inc., Build America Bonds with ERPs make up about 13% of the taxable municipal market.

Examples of BAB Extraordinary Redemption Provisions

Example 1:

An “Extraordinary Event” will have occurred **if the Issuer determines that a material adverse change has occurred to Section 54AA or Section 6431 of the Code** or there is any guidance published by the Internal Revenue Service or the United States Treasury with respect to such Sections or any other determination by the Internal Revenue Service or the United States Treasury, which determination is not the result of any act or omission by the Issuer to satisfy the requirements to qualify to receive the 35% cash subsidy payment from the United States Treasury, **pursuant to which the Authority’s 35% cash subsidy payment from the United States Treasury is reduced or eliminated.**

Example 2:

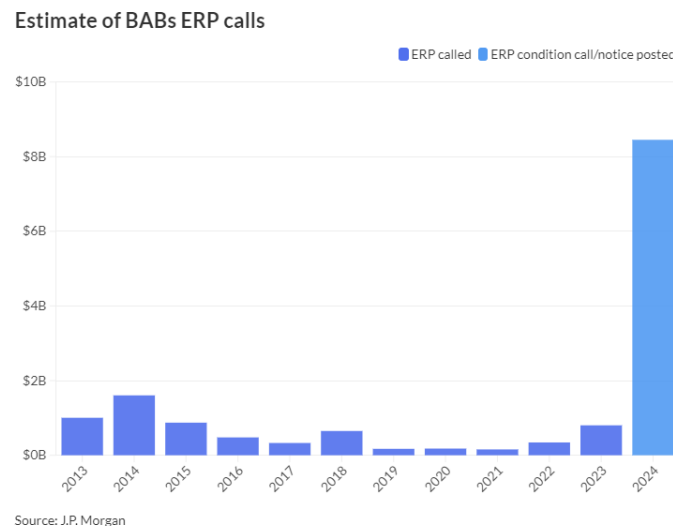
An “Extraordinary Event” will have occurred if a **material adverse change has occurred to Section 54AA or 6431 of the Internal Revenue Code of 1986**, as amended (as such Sections were added by Section 1531 of the Recovery Act, pertaining to “Build America Bonds”) **pursuant to which the Issuer’s 35% cash subsidy payment from the United States Treasury is reduced or eliminated.**

Example 3:

An “Extraordinary Event” will have occurred **if Section 54AA or 6431 of the Internal Revenue Code of 1986**, as amended (the “Code”)(as such Sections were added by Section 1531 of the Recovery Act, pertaining to “Build America Bonds”) **is modified, amended or interpreted in a manner pursuant to which the Authority’s 35% cash subsidy payment from the US Treasury is reduced or eliminated.**

2024 BAB Redemptions

- BAB subsidy payment sequestration began in 2013, however only a relatively small amount of BABs have been called prior to this year using ERPs. Additionally, the sequestration rate is currently the lowest it has been since sequestration commenced (8.7% in 2013 vs. 5.7% now).
- Yet, according to a municipal morning intelligence report published by JPMorgan on April 10th:
“In 2024 alone, we have identified 17 unique issuers that have either called BABs (eight issuers, affecting \$3.9 billion of debt), posted conditional calls (five issuers, set to impact \$3.6 billion of debt), or announced that they are considering financing plans in this regard (four issuers, potentially impacting \$1.9 billion of debt)”



- Initial published estimates from JPMorgan, Barclays and others originally estimated that between **\$30-90 billion** in BABs may be redeemed this year.

Why Now?

Until recently most issuers and their counsel were concerned that the sequestration of BAB subsidy payments alone was likely not enough to trigger extraordinary optional redemption provisions as the sequestration legislation did not directly amend or change §§ 54AA or 6431 of the Code.

So What Changed?

Indiana Municipal Power Agency v. United States

- In 2021, a group of midwestern power agencies who issued Build America Bonds under the BAB Program filed suit in the United States Court of Federal Claims alleging that by sequestering a portion of the BAB subsidy payments payable to them under the BAB Program, the United States was violating its statutory obligation to pay BAB subsidy payments at the 35% rate set forth in ARRA statute and that its failure to make BAB subsidy payments at the 35% statutory rate constituted a breach of contract.
- The Federal Claims Court rejected both of these arguments and instead held that the BAB subsidy payments “constituted **direct spending** subject to sequestration, rather than appropriation under an ‘appropriation Act’ exempt from sequestration.”
- The court held that “[t]he government was statutorily required to reduce its payment obligations” and that “[t]he Taxpayer Relief Act expressly **modifies** the government’s existing payment obligations, and it does so in a way that directly conflicts with the earlier payment program created by section 1531 of the ARRA.”
- The power agencies appealed to the U.S. Court of Appeals for the Federal Circuit who upheld the Federal Claims Court decision on February 17, 2023.
- On July 12, 2023, the power agencies appealed to the U.S. Supreme Court who denied certiorari on November 20, 2023.



Orrick Brief

- After the ruling, Orrick, Herrington & Sutcliffe published a brief on its website entitled:
“Attention BAB Issuers: Extraordinary Optional Redemption is Available”
- The brief said that the ruling in *Indiana Municipal Power Agency* provides “favorable guidance” for issuers wondering if sequestration “constituted an ‘extraordinary event’ that would trigger their right to seek extraordinary optional redemption.”
- “The *Indiana Municipal Power Agency* case supports the conclusion that sequestration resulted in a materially adverse change to the cash subsidy payment obligation established under §6431.”
- “Although the specific language must be reviewed in each case, we believe extraordinary optional redemption is available for issuers of BABs in most cases.”

Improved Refunding Economics

- According to Vikram Rai, head of municipal markets strategy at Wells Fargo, until now, most BAB calls had yet to be exercised due to economics. While the issuer could, in theory, realize long-term savings by “calling these bonds and refunding them at lower rates, the upfront cost made it prohibitive.” In instances when the ERP language “enabled issuers to call the bonds at par or only at a slight premium, exercising the ERP call made sense and thus issuers did so.” Due to higher interest rates, the bond prices are trading closer to par, meaning it makes economic sense for the ERP call, especially for shorter maturity securities.
- Based on the way rates have moved over the last several years, it has made “potentially invoking these things more attractive than it was five or six years ago.”
- In a recent Western Asset blog entitled “Weekly Municipal Monitor – Bye-Bye, BABs?” the authors noted that “subsidy reductions have deteriorated issuer economics of keeping the taxable debt outstanding versus tax-exempt funding alternatives. This dynamic has been exacerbated recently by high quality tax-exempt issuance trading at near record-low Muni/Taxable ratios. As municipal fundamentals improved over the past few years, more issuers were upgraded to higher quality cohorts, supporting the ability to capitalize on the cost savings offered in the high quality tax-exempt municipal market.”

Exhibit 2: 10Y AAA Muni YTW—10Y Treasury YTW (After the Effective Subsidy Rate)



Source: Western Asset, Thomson Reuters, Bloomberg. Yield-to-worst (YTW) is the lowest potential yield that can be received on a bond without the issuer actually defaulting. As of 05 Apr 24. Select the image to expand the view.

NEW ISSUE – BOOK-ENTRY ONLY

RATINGS:

See “RATINGS” herein

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to The Regents, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2024 Series BV Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the 2024 Series BV Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that interest on the 2024 Series BV Bonds is included in adjusted financial statement income of certain corporations and is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2024 Series BV Bonds. See “TAX MATTERS” herein.



\$1,092,295,000

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
GENERAL REVENUE BONDS,
2024 SERIES BV**

Dated: Date of Delivery

Due: As shown on inside cover

The Regents of the University of California General Revenue Bonds, 2024 Series BV (the “2024 Series BV Bonds”) will be issued in fully registered form and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York. DTC will act as securities depository of the 2024 Series BV Bonds. Individual purchases will be made in book-entry form only. Purchasers will not receive certificates representing their interests in the 2024 Series BV Bonds purchased.

The Regents will use the proceeds of the sale of the 2024 Series BV Bonds to refund the Refunded Bonds (as defined herein). The 2024 Series BV Bonds will be issued in denominations of \$5,000 each or any integral multiple thereof. Interest on the 2024 Series BV Bonds is payable on May 15, 2024 and semiannually thereafter on May 15 and November 15 of each year.

The interest, principal or redemption price of the 2024 Series BV Bonds are payable by The Bank of New York Mellon Trust Company, N.A. as successor trustee, to DTC. DTC is required to remit such principal or redemption price and interest to its Participants for subsequent disbursement to the Beneficial Owners of the 2024 Series BV Bonds, as described herein. The 2024 Series BV Bonds are subject to redemption prior to their stated maturities, as described herein.

This cover page contains information for quick reference only. It is not a summary of this issue. Potential investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

**MATURITIES, AMOUNTS, INTEREST RATES, AND PRICES OR YIELDS
SEE INSIDE COVER**

The 2024 Series BV Bonds are limited obligations of The Regents, payable solely from General Revenues, the proceeds of the Bonds and any other amounts held in any fund or account established pursuant to the Indenture (excluding the Rebate Fund), as described herein. The 2024 Series BV Bonds and all other Bonds issued pursuant to the Indenture are entitled to the equal benefit, protection and security of the pledge and covenants and agreements of the Indenture, as hereinafter described. The Indenture permits The Regents to incur additional Indebtedness secured by a pledge and lien on General Revenues senior in priority, or on a parity, or subordinate in priority with the pledge and lien of the Indenture, as described herein. The 2024 Series BV Bonds will not constitute a liability of or a lien upon the funds or property of the State of California or of The Regents, except to the extent of the aforementioned pledge and lien of the Indenture. The Regents has no taxing power.

The 2024 Series BV Bonds are offered when, as and if issued, subject to the approval of certain legal matters by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to The Regents. Certain legal matters will be passed upon for The Regents by its Office of General Counsel and certain legal matters will be passed upon for the Underwriters by O’Melveny & Myers LLP, counsel to the Underwriters, and by Orrick, Herrington & Sutcliffe LLP, Disclosure Counsel to The Regents. It is anticipated that the 2024 Series BV Bonds will be available for delivery to DTC in New York, New York, on or about March 27, 2024.

Jefferies

Academy Securities
Cabrera Capital Markets, LLC
Great Pacific Securities
Loop Capital Markets
Raymond James
Siebert Williams Shank & Co., L.L.C.

BofA Securities

Ramirez & Co., Inc.

Alamo Capital
D.A. Davidson
Hilltop Securities
Mischler Financial Group, Inc.
RBC Capital Markets
Stifel

Barclays

Blaylock Van, LLC
Goldman Sachs & Co. LLC
J.P. Morgan
Morgan Stanley
R. Seelaus & Co., LLC
TD Securities

Wells Fargo Corporate & Investment Banking

Dated: March 5, 2024

- On March 5, 2024, The Regents of the University of California (“The Regents”) came to market and priced \$1.1 Billion of its General Revenue Bonds, 2024 Series BV, a portion of which was intended to refund its prior Build America Bonds.
- The Regents claimed that the sequestration of the BAB subsidy payments triggered the extraordinary call provisions of their existing BABs allowing for a par call of the bonds.
- Orrick is Bond Counsel to The Regents.

The Investors Strike Back

- Shortly after the refunding bonds priced on March 5th, a group of investors sent a letter to The Bank of New York Mellon, the trustee for The Regent's BABs, which stated that they believed "unequivocally" that The Regents "has no legal basis to redeem any of the [BABs] pursuant to exercising the Extraordinary Optional Redemption provisions."
- The letter said that the trustee "is prohibited from executing the redemption of any of the [BABs], as such action would constitute a violation of bondholder rights, and a violation of contractual agreements established in the official statements."
- According to the Bond Buyer, the investors which signed the letter included MetLife Investment Management, Safety National Casualty Corp., DCM US Credit Fund, Mackay Shields, PGIM, Hartford Investment Management Company and several insurance companies including Houston Casualty and Philadelphia Insurance.



Kramer Levin Letter

- On March 20th, a separate letter was sent to The Regents by the law firm of Kramer Levin on behalf of a group of unidentified investors demanding that The Regents either pay a make-whole premium, cancel the deal or face a lawsuit for “breach of contract, breach of the implied duty of good faith and fair dealing, and unjust enrichment, at a minimum.”
- The letter contended that The Regents had no authority to cause an extraordinary redemption of the BABs because in their view:
 - There has been no change to §§ 54AA or 6431 of the Code and therefore no “Extraordinary Event” has occurred.
 - There has been no material reduction in The Regents’ BAB subsidy payments.
 - The letter contends that sequestration cuts are “immaterial”, “minuscule by any metric” and only resulted in an increase in the effective interest rate on The Regents’ BABs of “around one-eighth of one percent.”
 - “If the reduction in the subsidy related to the sequestration provisions of the Budget Control Act of 2011 were indeed material, surely the Issuer would have exercised the extraordinary optional redemption more than 10 years ago, when such reduction in the Build America Bond subsidy initially went into effect.”
 - The exercise of any extraordinary optional redemption is now untimely because The Regents opted not to take advantage of it for over 10 years and is only exercising it now because the market conditions for refunding have become more favorable.
- The letter argues that the reasoning in the Orrick brief is “mistaken” and “unsound” and “acting on it would be subject to straightforward legal challenge.”
- Kramer Levin estimates that the difference between the extraordinary redemption par call and a make-whole redemption would be at least \$120 million.

Supplement to The Regents OS

SUPPLEMENT DATED MARCH 25, 2024 TO
OFFICIAL STATEMENT
DATED MARCH 5, 2024

Relating to

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
GENERAL REVENUE BONDS

\$1,092,295,000 2024 SERIES BV

The Official Statement dated March 5, 2024, for the above-referenced bonds (the "Official Statement") is supplemented by this Supplement to Official Statement dated March 25, 2024 (the "Supplement"). All defined terms used herein but not otherwise defined have the meanings ascribed to them in the Official Statement.

As described in the Official Statement, the proceeds of the 2024 Series BV Bonds will be used by The Regents to redeem the Refunded Bonds, which are certain maturities of the General Revenue Bonds, 2009 Series R (Taxable — Build America Bonds) and the Limited Project Revenue Bonds, 2010 Series F (Taxable — Build America Bonds), on March 27, 2024. The Regents intends to call the Refunded Bonds pursuant to the extraordinary optional redemption provisions relating to such Refunded Bonds.

Pursuant to each of the applicable indentures, (i) The Regents' option to use the extraordinary optional redemption for each series of the Refunded Bonds is triggered upon the occurrence of an "Extraordinary Event" and (ii) an Extraordinary Event will have occurred if a material adverse change has occurred to Section 54AA or 6431 of the Internal Revenue Code of 1986, as amended (the "Code") (as such Sections were added by Section 1531 of the American Recovery and Reinvestment Act of 2009 signed into law on February 17, 2009, pertaining to "Build America Bonds") pursuant to which The Regents' 35% cash subsidy payment from the United States Treasury is reduced or eliminated.

The Regents has received a letter, dated March 20, 2024, from a law firm purporting to represent a group of unidentified holders of the Refunded Bonds: (1) contending that no Extraordinary Event has occurred with respect to the Refunded Bonds, (2) contending that The Regents' use of the extraordinary optional redemption to redeem the Refunded Bonds is untimely, (3) contending that if the Refunded Bonds are to be redeemed as scheduled, that the redemption price should be calculated at the applicable "make-whole" optional redemption price for each maturity of Refunded Bonds rather than at the redemption price that applies to exercising the extraordinary optional redemption, and (4) indicating that the group of unidentified holders of the Refunded Bonds reserves the right to pursue an action against The Regents for breach of contract, breach of implied duty of good faith and fair dealing and unjust enrichment, at a minimum, if The Regents fails to cancel the redemption of the Refunded Bonds or, in the alternative, fails to pay the make-whole optional redemption price relating to the Refunded Bonds if the redemption proceeds.

Regardless of how these matters are resolved, The Regents (i) does not believe that such matters will have a material adverse impact on The Regents' financial position or its ability to pay the debt service on all of its outstanding indebtedness, including the 2024 Series BV Bonds,

- On March 25, 2024, The Regents posted a supplement to the Official Statement for the refunding bonds which acknowledged its receipt of the Kramer Levin letter, included a summary of the claims of the investors and disclosed the threat of a potential lawsuit, but concluded:

“Regardless of how these matters are resolved, The Regents (i) does not believe that such matters will have a material adverse impact on The Regents’ financial position or its ability to pay the debt service on all of its outstanding indebtedness, including the [refunding bonds], and (ii) intends to proceed with the issuance of the [refunding bonds] and the redemption of the BABs on March 27, 2024.

- The refunding bond issuance closed as planned on March 27, 2024.
- According to an article published by Fidelity:

“Investors in the refunded bonds do not appear to be penalizing the issuer in secondary trading. Recent block trades of longer maturities of refunded University of California tax-exempt bonds show yields and spreads remain similar to the original pricing and are tracking with general market movements.”



- On March 27, 2024, the State of Washington issued \$1,092,550,000 of its Motor Vehicle Fuel Tax and Vehicle Related Fees General Obligation Refunding Bonds, Series R-2024 to refund its outstanding Build America Bonds.
 - Prior to the issuance, two investors sent separate emails to Washington's deputy treasurer objecting to the State's decision to use the extraordinary call provisions.
 - According to the Bond Buyer, one of the emails, sent by Jonathan Souza, director of Credit Research at Wedge Capital Management, disputed that an extraordinary event had occurred as a result of sequestration. He then referenced the letter challenging The Regents BAB redemption and added that "any insight into the state's decision to consider refunding bonds via the extraordinary call provision would be greatly appreciated."
 - In the other email, Brian Pacheco, assistant vice president with Amica Mutual Insurance Co., said his firm holds \$80M of the state's BABs and views the state as a "high quality credit." He said his firm is "committed to the state, but the recent redemption call notices gives us pause." In his email he called attention to the fact that many banks and insurance companies purchased the state's BABs in the secondary market and hold them at amortized cost.

"That means that since we purchased many of these bonds in the secondary market at prices well in excess of par (ranging between 108 – 125 percent of par), as many investors did during the low interest rate environment, and that those prices amortize down to par over the course of the remaining maturity of the bond, the book value of our longer maturity State of Washington BABs (2033, 2039, 2040 maturities) have not amortized all that much. They are all above 110% of par today. That is well in excess of the ERP call prices."

"This will result in large book losses for all insurance companies and banks that hold State of Washington BABs"

"While we understand this is unique to banks and insurance companies since we hold our bonds on the books at amortized cost, we are among the investors in municipal bonds and would like to bring this to your attention."

Build America Bond Redemption Notices



The Impact

- In a recent Western Asset blog on April 9th entitled “Weekly Municipal Monitor – Bye-Bye, BABs?” the authors said that “Since the call risk increased in earnest this year, BABs have since traded at higher relative yields versus non-BAB taxable muni counterparts.”
- A Penn Mutual Asset Management blog on April 11, 2024 entitled “Not So Extraordinary BABs” noted that while the Bloomberg Taxable Municipal Index has outperformed the investment-grade corporate market so far this year, “within the taxable municipal index Build America Bonds (BABs) have recently been a notable laggard.”
- A Bank of America strategist has also noted that spreads on Build America Bonds have widened “significantly” in the last few months as a result of the current wave of BAB redemptions. So far this year, the BABs index option-adjusted spread has cheapened 10bps compared to the ICE Broad Taxable Municipal Bond Index OAS. “There is no particular reason other than the much-debated ERP refundings.”
- However, in the Western Asset blog the authors speculated that “While more economical than ever to call outstanding BABs, we believe that ERP call activity could remain limited. First, attractive tax-exempt relative valuations are more contained to the highest quality AAA cohort, as AA and A rated bonds’ tax-exempt relative value is less compelling for issuers. Second, fixed costs associated with new issuance could overwhelm the positive refinancing benefits, particularly for smaller deals outstanding. Last, we believe issuers could question whether the sequestration of BABs subsidies qualify as an ERP event, and may ultimately determine that costs associated with legal challenges could outweigh positive economics associated with the refinancing.”
- Citing concerns over the potential for bondholder litigation, both JPMorgan and Barclay’s have revised down their original estimates of potential BAB refunding this year.
- On April 10, 2024, Norfolk, Virginia became the first issuer to cancel its planned BAB redemption. The city gave no reason for its cancellation; however, it said it reserved the right to call its BABs for redemption in the future.

Exhibit 3: BAB vs. Non-BAB YTW



Source: Bloomberg. As of 04 Apr 24. Yield-to-worst (YTW) is the lowest potential yield that can be received on a bond without the issuer actually defaulting. Select the image to expand the view.

Discussion

- Can redemption be triggered at any time after the condition is met or is there a specific time frame after which the ability to redeem is somehow implicitly waived?
 - Does each sequestration amount to a new extraordinary event?
 - Did the ruling in Indiana Municipal Power Agency v. US reset the timeframe?
- Does the issuer of a BAB have an obligation to disclose to investors that it believes that an Extraordinary Event has occurred irrespective of whether it has a current intention to effect a redemption of the BABs?
- A central dispute between issuers and investors in ERP redemptions revolves around whether a “material adverse change” has occurred. Lenders often include material adverse change (“MAC”) defaults in their loan documents. Are there any lessons we can take from the BAB extraordinary optional redemption dispute which may be helpful in determining the usefulness of lender MAC defaults?

Commercial Financial Disclosure Laws Update

Previous webinar on October 31, 2022, which covered laws in California, New York, Utah and Virginia.

Since then, Georgia, Florida and Connecticut have enacted similar legislation.

Generally aimed at providers of small-balance commercial loans and financings.

Part of a growing trend among states to regulate smaller commercial loans not secured by real estate.

Georgia Fair Business Practices Act

Senate Bill 90 amended Georgia law on May 1, 2023, with an effective date of January 1, 2024.

Law requires providers of commercial credit in amounts less than \$500,000 to provide Truth in Lending-like disclosures to small-business borrowers prior to consummation of a transaction (without specifying the time period).

Banks and their subsidiaries, affiliates and holding companies are exempt, among other entities. Purchase money obligations are also exempt.

Certain information must be disclosed and penalties for non-compliance apply.

Florida Commercial Financing Disclosure Law

Enacted June 26, 2023, and became effective on January 1, 2024.

Requires providers of certain commercial non-real estate secured financing transactions exceeding \$500,000 to make certain consumer-oriented disclosures.

Disclosures do not apply to banks or affiliates or holding companies of such institutions. The disclosures also do not apply to loans exceeding \$500,000, lease and certain purchase money transactions.

Again, certain information must be disclosed at or before consummation of the transaction. Certain acts are prohibited by brokers arranging a consumer financing transaction and penalties apply.

Connecticut Financing Disclosures Act

Enacted June 28, 2023, and becomes effective on July 1, 2024.

Requires lenders offering certain types of commercial purpose “sales-based financing” of \$250,000 or less to provide consumer-like disclosures to applicants and mandates lenders making such credit offers register with the Connecticut Department of Banking by October 1, 2024.

The law does not apply to banks, bank holding companies, credit unions and their subsidiaries and affiliates. The law also does not apply to certain types of transactions (real-estate secured loans, leases and purchase money obligations, among others).

Certain disclosures must be provided to borrowers before making a specific offer. Annual registration required. Penalties authorized for non-compliance.

Oklahoma Lease Purchase Agreements — Form 120B

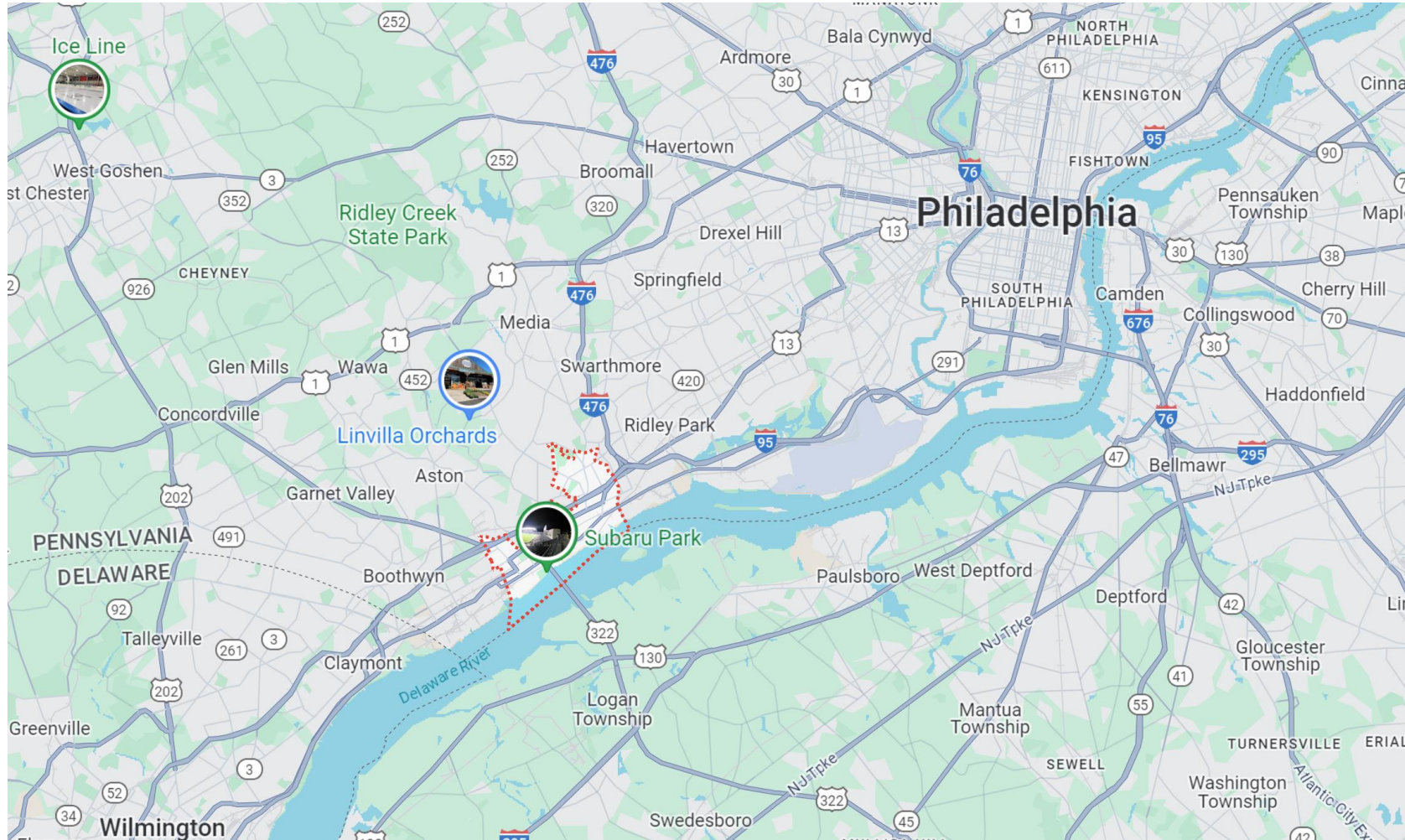
62 Okl.St.Ann. Section 430.1 provides authorization for counties, cities and school districts to “rent on a monthly basis real or personal property” and pay rental charges during any fiscal period out of appropriated funds. Any such contract extending beyond June 30 of the fiscal year shall contain provisions for mutual ratification of renewal.

Starting in 2017, Oklahoma State Auditor & Inspector’s office introduced Form 120B, which is required when a county enters into a lease for personal property.

Form 120B is short and does not contain all of the terms and requirements that a typical lease might contain.

At least one AGLF member has had success in turning Form 120B into an attachment to their standard lease documents, allowing the county to comply with their requirements while using their form documents.

City of Chester, Pennsylvania



City of Chester, Pennsylvania

- **Timeline**

- **1995**

- Secretary of the Pennsylvania Department of Community and Economic Development (DCED) designated the City a “Distressed Municipality” under the Municipalities Financial Recovery Act (Act 47)

- **1996 Recovery Plan**

- Recovery Coordinator to report to Commonwealth

- **2008**

- Harrah's Philadelphia Casino and Racetrack



City of Chester, Pennsylvania

- **Timeline**
 - **2009-2010**
 - Subaru Park – Philadelphia Union (MLS)
 - **2013-2018**
 - Amended Recovery Plan x3
 - **2020**
 - Declaration of Fiscal Emergency (Governor)
 - Court appointed receivership
 - **2020-2024**
 - City officials and receiver disputes
 - Fraud, obstruction, unethical behavior, etc.
 - **2022**
 - Executive Order
 - Chapter 9 Bankruptcy
 - State loans



City of Chester, Pennsylvania

- **Under Act 47, the receiver must**
 - Provided vital and necessary services
 - Pay financial obligations
 - Fund pensions
- **Under Act 47, the receiver must not**
 - Change the form of government
 - “affect powers and duties of elected and appointed officials”
- **Supreme Court of Pennsylvania**
 - City v. Commonwealth
 - Receivership authority
 - Decided January 29, 2024
 - Held: “Understandably, local officials may take umbrage at the suggestion that their performance has contributed to the problems that require such aggressive intervention....[l]ocal officials must accept the exercise of [the Commonwealth’s sovereign and plenary police power in emergency fiscal conditions to protect the health, safety and welfare of a municipality’s citizens power, whether they like it or not.”