

NABL Weekly Wrap – August 5, 2011

The *Weekly Wrap* will adjourn with Congress and return in September

IDEA OF THE WEEK

Congress Agrees to Debt Limit Increase in the 11th Hour

The stand-off between the Republican controlled House and the Democratic controlled Senate ended early this week when agreement was reached on a deal that would raise the debt limit by \$900 billion immediately coupled with \$2.9 trillion in deficit reduction over the next decade. President Obama signed the *Budget Control Act of 2011* (Act) into law on Wednesday, August 3, 2011.

Highlights of the Act include:

- Increase in the federal debt limit by at least \$2.1 trillion, which is predicted to take the government past the November 2012 presidential election. The Act authorizes \$900 billion almost immediately, with the remainder available after Congress votes on further deficit reduction measures to be recommended by the so-called “Super Committee” (see below) and a balanced budget amendment.
- Requires Congress to create a bipartisan committee process (Super Committee), tasked with identifying an additional \$1.5 trillion in deficit reduction, potentially from both entitlement and tax reform. Committee is required to report legislation by November 23, 2011, which will receive fast-track protections. Congress is required to vote on Committee recommendations by December 23, 2011.
- Specifies that the Super Committee will include twelve members, drawn equally from each party, split evenly between the House and the Senate, and appointed by the majority and minority leaders of each chamber.
- Establishes an enforcement mechanism to encourage both Democrats and Republicans to agree to balanced deficit reduction. If the Super Committee fails, the enforcement mechanism will trigger \$1.2 trillion in spending reductions beginning in 2013 – split 50/50 between domestic and defense spending. This mechanism will protect Social Security, Medicare beneficiaries, and low-income programs from any cuts. Cuts will affect defense spending and payments to Medicare providers most heavily.

The White House explanation of the bill can be found here:

<http://www.whitehouse.gov/infographics/the-bipartisan-compromise>

REGULATORY

IRS Releases Supplemental Guidance Regarding When Bonds are Issued under Section 146

On August 3, 2011, the Internal Revenue Service (IRS) released Notice 2011-63, which provides supplemental guidance on the determination of when state and local bonds, particularly draw-down loans and commercial paper, are considered “issued” for purposes of volume cap limitations on private activity bonds under § 146 and other volume caps and limitations under federal law. Notice 2011-63 amends and supplements Notice 2010-81.

Notice 2011-63 is available on the IRS web site:

<http://www.irs.gov/pub/irs-drop/n-11-63.pdf>

NABL comments on Notice 2010-81 are available on the NABL web site library under Comment Letters/Position Papers:

http://www.nabl.org/uploads/cms/documents/NABL_IRScomments_12.20.10.pdf

SLGS Sales Resume

On August 2, 2011, the Department of the Treasury announced that it resumed the sale of State and Local Government Series (SLGS) securities, effective 5 p.m. EDT on August 2, 2011.

Additional information on SLGS is available on the Treasury web site:

http://www.treasurydirect.gov/govt/resources/faq/faq_slgs.htm

NABL Submits Comments to SEC on Proposed Rules Regarding Credit Risk Retention Requirements

On August 2, 2011, the National Association of Bond Lawyers submitted comments to the Securities and Exchange Commission related to proposed rules (SEC File No. S7-14-11) to implement the credit risk retention requirements of Section 941 (b) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

The NABL comments are available on the NABL web site library under Comment Letters/Position Statements:

<http://www.nabl.org/uploads/cms/documents/NABLCommentsCreditRiskRetentionS71411.pdf>

Treasury OIG Report Finds That BABs Compliance Check Questionnaires Were Appropriate

On August 2, 2011, the Department of the Treasury Office of Inspector General for Tax Administration released the report *The Direct Pay Build America Bond Compliance Check Program Has Yet to Result in Wide-Scale Examinations*, reference number 2011-11-053.

In February 2010, the Internal Revenue Service Office of Tax Exempt Bonds (TEB) mailed over 375 compliance check questionnaires to issuers of Build America Bonds. The report indicated that the questionnaires sparked concerns among some issuers that responding to the compliance checks would result in wide-scale examinations. The report found that the questionnaires were appropriate to gather information that could indicate a high risk of potential noncompliance without requesting information specific enough to start examinations and that in fact very few BABs examinations have been initiated. The report also noted that the TEB office does not have formal written procedures for developing and conducting compliance checks, and recommended that such procedures be developed. IRS management agreed with the recommendation.

The Direct Pay Build America Bond Compliance Check Program Has Yet to Result in Wide-Scale Examinations is available on the Treasury web site:

<http://www.treasury.gov/tigta/auditreports/2011reports/201111053fr.pdf>

MSRB Notice 2011-37, Financial Advisors, Private Placements, and Bank Loans

On August 3, 2011, the Municipal Securities Rulemaking Board (MSRB) issued Notice 2011-37, regarding financial advisors and private placements in the municipal market.

The MSRB states that, given the growing use of placements as an alternative to traditional public offerings of municipal securities, it is important that all financial advisors, including financial advisors that are also broker-dealers, understand the principles for treatment as a “broker” set forth by the Securities and Exchange Commission so that they can tailor their conduct accordingly. It is also important for financial advisors to be aware that what are referred to as “bank loans” may, depending on the specific terms and conditions, be placements of municipal securities.

MSRB Notice 2011-37 is available here:

<http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-37.aspx>

MSRB Notice 2011-36: Interpretive Notice on Rule G-17 Filed with SEC

On August 2, 2011, the Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) a proposed interpretive notice concerning the application of Rule G-17, on conduct of municipal securities and municipal advisory activities, to underwriters of municipal securities. The MSRB requested that the proposed notice be made effective 90 days after approval by the SEC.

MSRB Notice 2011-36 is available here:

<http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-36.aspx>

OTHER NEWS FROM WASHINGTON

GASB to Hold Teleconference on Pension Exposure Draft

The Government Accounting Standards Board (GASB) will hold a live webcast on Wednesday, August 10, 2011, at 1:00 pm titled *An Overview of the GASB's New Pension Proposal*, to provide an overview of its two July 8, 2011, exposure drafts, *Accounting and Financial Reporting for Pensions—an amendment of GASB Statement No. 27*; and, *Financial Reporting for Pension Plans—an amendment of GASB Statement No. 25*. There is no charge for the one hour webcast, which will feature GASB Chairman Robert Attmore and David Bean, GASB director of research and technical activities. Registered webcast attendees will have an opportunity to ask questions about the proposals.

Preregistration is available at <http://www.gasb.org>

SIFMA, BDA, GFOA, NASACT and others Submit Comments on FINRA GASB Funding Proposal

A number of organizations submitted comments this week to the Financial Industry Regulatory Authority (FINRA) on its proposal 11-28, issued in June 2011, to establish an accounting support fee for the annual budget of the Government Accounting Standards Board (GASB) as required by the *Dodd-Frank Act*. FINRA proposed that broker-dealers pay a quarterly fee, predicated on municipal bond sales, to contribute to the GASB annual budget. The Bond Dealers of America (BDA), the Securities Industry and Financial Markets Association (SIFMA), and others voiced objections to the fairness of requiring only broker-dealers, rather than a larger segment of market participants, to fund GASB. GFOA criticized FINRA for failing to consult with state and local governments prior to issuance.

The comment letters will be available here:

<http://www.finra.org/Industry/Regulation/Notices/Comments>