BRACEWELL

INSIGHTS

Mixed Messages on PABs: Fit for the Chopping Block or Cornerstone of Infrastructure Finance?

February 20, 2018

*By: **Victoria N. Ozimek** and **Brian P. Teaff***

Only a few months ago, the public finance industry was shaken when the U.S. House of Representatives proposed to eliminate tax-exempt private activity bonds ("PABs"), despite previous assurances that tax reform would not touch tax-exempt bonds. Although the final ***Tax Cuts and Jobs Act*** passed in late December retained all categories of PABs, some members of Congress continued to warn that the conversation relating to PABs was not yet over and the scope of PABs should be limited in future legislation.

Fast-forward to February 12, 2018, when the White House took a rosier view of PABs with its release of the highly anticipated ***Legislative Outline for Rebuilding Infrastructure in America*** (the "Infrastructure Proposal"). As Bracewell's Policy Resolution Group ***noted***, the Infrastructure Proposal calls for the expansion of PABs to "create flexibility and broaden eligibility to facilitate the use of PABs to leverage financing for public-purpose infrastructure projects."

As it relates to PABs, the Infrastructure Proposal would (i) retain PABs for airports, mass commuting facilities, facilities for the furnishing of water, sewage facilities and solid waste disposal facilities; (ii) expand the scope of PABs issued for seaports, surface transportation facilities, and hydroelectric power generating facilities; and (iii) add new categories of PABs for flood control and stormwater facilities, rural broadband service facilities and environmental remediation costs on certain sites. Projects for all of these categories would be subject to governmental ownership and general public use requirements. Moreover, the Instructure Proposal also would eliminate the AMT preference and volume cap requirements for these types of PABs. Finally, the Infrastructure Proposal recommends changes to the remedial action rules that would facilitate private involvement in projects that originally had been financed with tax-exempt governmental bonds.

In the wake of the Infrastructure Proposal's release, members of Congress remained mixed in their views on PABs. For example, reports indicate that Representative Brady (R-Tx.), Chairman of the House Ways and Means Committee, continues to believe that PABs should be available only for limited types of infrastructure projects. However, the co-chairs of the House Municipal Finance Caucus, Representatives Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.), recently introduced bipartisan legislation to reinstate advance refundings and, in the course of doing so, noted support for PABs.

These incongruous positions regarding the role PABs have to play in financing projects indicates that their fate continues to be uncertain. Specifically, while it is entirely possible that a Congressional infrastructure bill could expand the types and number of projects that can be financed with PABs, it also is possible that existing categories of PABs not mentioned in the Infrastructure Proposal (such as PABs issued for affordable housing and for projects owned by Section 501(c)(3) organizations) may become sacrificial offerings, or subject to new restrictions, as a result of Congressional negotiations. With this in mind, those interested in the future of PABs should remain vigilant in efforts to promote the benefits of PABs in building strong communities.

Bracewell's ***Public Finance team***, as well as the members of our DC-based ***Policy Resolution Group***, are on standby to assist.