NAHEFFA
National Association of Health and Educational Facilities Finance Authorities

Supporting ACCESS

Winter 2019

Harry Huntley

NAHEFFA President's Message

by Harry Huntley, Executive Director
South Carolina Jobs-Economic Development Authority

I hope everyone had a wonderful Thanksgiving with lots of food, family and fun. My house was full (maybe wild and crazy) with my four children and three grandchildren for three days, and it was great to have everyone together. Unfortunately, my USC Gamecocks took it on the chin from rival Clemson on Saturday. But wait until next year (that is what suffering Gamecock fans keep saying)!

It is hard to believe that next year is almost here, too. The economy keeps chugging along thanks to strong consumer spending. Inflation stays below 2%, even though conventional thinking would expect historically low unemployment to drive inflation up. Interest rates are so low, I wonder why the Treasury is not selling 100-year bonds! And the stock market keeps hitting new highs. Did anybody really see this coming?

There have been plenty of changes in our business, too. Advanced refundings have been replaced with taxable refundings. Bank placements are being replaced with public placements. Senior living projects are popping up everywhere (a lot of old people in SC?). And just today, a $400 million hospital refunding we were working on was derailed by a merger and taxable takeout!

Even though we survived tax reform two years ago, we should not be lulled to sleep by the lack of serious activity in Washington. Chuck Samuels does a great job keeping us informed, and, lately, everything seems to be on the regulatory side (SEC and MSRB – not Congress). And NAHEFFA is finally getting the recognition we deserve with Barry Fick and Dennis Reilly representing us (see Chuck's comments). We should all continue making contact with our Congressional offices with information about projects we financed and legislation that would help our borrowers.

Since we are working without an Operations Director at this time, our committees have done a great job of taking over. Bonnie Payette (Communications and Membership) has updated the Membership Directory and worked on the content of this newsletter, while the Wisconsin Authority led by Stephanie Schirripa has taken responsibility for the updated format and publication of the newsletter, numerous website changes and the creation our new email address (info@naheffa.com). John Sager and Jeanne Phillips (Sponsorship) are ready to roll with the 2020 sponsor solicitations. Martin Walke (Advocacy) stays connected to Washington. Don Templeton (Finance) continues to keep our financials in order and Maribeth Wright (Governance) is working on our spring nominations. Corrine Johnson (Conference) is well out in front of our upcoming conferences in Charleston and Milwaukee. We have many new members in NAHEFFA and working on a committee is the best way to contribute to our organization and get connected with more members. Call me and get involved!

We are planning for a great conference in Charleston April 27-29, 2020. Conde' Nast magazine keeps naming Charleston the number one destination for a reason, and I look forward to seeing you there. I hope everyone has a wonderful holiday season and a Happy New Year.

Future NAHEFFA Conferences

April 27-29, 2020
Charleston, SC
Francis Marion Hotel

September 16-18, 2020
Milwaukee, WI
Journeyman Hotel

In This Issue...

NAHEFFA President's Message | 1

NAHEFFA Sponsorship Information | 2

Washington Advocacy Report | 3

Featured Article - Hawkins Delafield & Wood | 4 & 5

Random Facts | 6

GREETINGS FROM THE NAHEFFA SPONSORSHIP COMMITTEE

The NAHEFFA Fall Conference in Portland, Maine was a great success. Our conferences would not be possible without the generous support of our sponsor partners!

We would like to thank our 2019 Sponsors for their continued support:

Assured Guaranty
Ballard Spahr
Bank of Ameirca
Barclays
BNY Mellon
BOK Financial
Chapman and Cutler
Commerce Trust Company
Dorsey & Whitney
Gilmore & Bell
Hawkins Delafield & Wood
Hawley Troxell Ennis & Hawley
Hillis Clark Martin & Peterson
ImageMaster
Katten Muchin Rosenman
Kaufman Hall
KeyBanc Capital Markets
Kutak Rock
Locke Lord
Melio & Company
Mintz Levin Cohen Ferris Glovsky and Popeo
Orrick Herrington & Sutcliffe
Piper Jaffray
Polsinelli
Ponder & Co
Quarles & Brady
S&P Global Ratings
Squire Patton Boggs
US Bank NA
Ziegler

NAHEFFA encourages our sponsors to attend and participate in our conferences. Attendance at our events helps to build stronger relationships, reach key decision makers in the industry and increase the sponsor organization's exposure. NAHEFFA conferences are a gathering place for authority board members and key staff. NAHEFFA conferences are also an opportunity to increase awareness of issues and concerns in the industry.

Best regards,

Jeanne Phillips and John Sager, Idaho Health Facilities Authority
Sponsorship Committee Co-Chairs

SAVE THE DATES

Spring Conference
April 27-29, 2020 | ***Charleston, SC***
Francis Marion Hotel
Welcome reception to be held the evening of April 27th
Conference sessions held April 28-29th

Fall Conference
September 16-18, 2020 | ***Milwaukee, WI***
Journeyman Hotel
Welcome reception to be held the evening of September 16th
Conference sessions held September 17-18th

For more information on Conference sponsorhip and registration, please click here.

WASHINGTON ADVOCACY REPORT

December 2, 2019

by Charles A. Samuels, Mintz Levin | General Counsel, NAHEFFA

Chuck Samuels

In Washington D.C., the swamp gets murkier, the deep state gets darker, and we learn every day that there is no such thing as the bottom. And that's just the Redskins. Our political mess is worse. Even the long time awaited, otherwise unalloyed joy of the Nationals winning the World Series was spoiled a bit by the politics of who went to the White House and did what.

Nonetheless, groups like ours, representing a significant segment of the economy and the public finance sector, must soldier on and look at our long-term interest to maintain a sustainable system of tax-exempt financing for nonprofit health and education and other charitable purposes. We need to provide every financing advantage we can obtain, protect our current mechanisms and make sure that the many seemingly good ideas for further regulation of and mandates on our charitable borrowers do not overwhelm the system and result in undermining the viability of tax-exempt financing. That gives us a special responsibility to look after the interests of our borrowers and be sensitive to and consult with them about the burdens and benefits of various new proposals.

In that regard, our primary focus recently has shifted from the legislative arena – – although it is still terribly important as discussed below – – and has been aimed at ensuring a reasonable system of securities disclosure regulation. As I write this, NAHEFFA is considering what comments it will file with the SEC and MSRB about the just announced proposal to use existing information submitted to EMMA to provide for the automated calculation and static display of the number of days between (i) the annual fiscal year-end date for the issuer or obligated person and (ii) the date an annual fiscal disclosure is submitted to EMMA for such annual fiscal period. EMMA would be reconfigured to more prominently display this information.

The idea is to use existing data already submitted to the system, but just display it in a more user friendly manner. We will take a careful look at the mechanics and policy behind this proposal, but my initial reaction is that it won't do much good but doesn't do much harm. I doubt sophisticated investors need this type of display, and I also doubt the true retail investors will look for it.

Unfortunately, I can't say that this is the only new disclosure proposal we will be confronting in the next 12 months. It is pretty obvious that the SEC all the way to the highest level – – the Chair – – is hell-bent on promoting through voluntary (browbeating) or more mandatory means earlier disclosure of financial information even if it is interim and unaudited. Whether it is a market reality or urban myth, the pro-disclosure policy cant is that investors are hungering for more and timely financial information and are suffering from lengthy delays in its disclosure. Usually, of course, the examples given are at the state and local government level but any changes in practice or requirements probably will apply to our sector as well.

We will see in the next year missives from the SEC which will attempt to assuage concerns that issuance of interim financials could create negative securities law implications and promote much earlier disclosure of such information. My general impression is that hospitals and the healthcare sector will be better off with practices of already issuing such information periodically while on the education side it doesn't make a whole lot of sense given the nature of school calendars, enrollment information, etc. These are exactly the distinctions that we make in our communications with the SEC and MSRB as well as in the group Dennis Reilly and I are in organized by the GFOA to look at future disclosure practices. We know that our Barry Fick on an MSRB advisory committee and GFOA's Debt Committee will be vigilant as well.

We should not forget the tax legislative side of things because we have too much at stake. Our small borrower (H.R.3967) and advance refunding (H.R. 2772) legislation are pending before the House Ways and Means Committee and there is certainly some chance that Democratic infrastructure or green legislation might include such provisions. We are also looking for Senate sponsors for these bills. I know it is enervating to advocate legislation when it doesn't seem to be going anywhere, but we have to look at this as a campaign and not a battle. Please ask your House delegations to support these bills and let your senators know that you would like them to introduce and support legislation on these subjects. Background documents on these bills are on our and the GFOA (https://www.gfoa.org/flc) websites. Please contact Martin Walke and me any time for assistance in your advocacy.

Hope you are all having a great holiday season and see you soon.

Proposed Treasury Regulations Provide Guidance in Connection with the Phase-Out of USD LIBOR

By: Hawkins Delafield & Wood LLP

On July 27, 2017, the U.K. Financial Conduct Authority, the regulator responsible for overseeing the production of the London interbank offered rate ("LIBOR"), announced its intention to cease its current efforts to assure sufficient bank participation in LIBOR rate-setting to permit continued publication of LIBOR rates as representative rates for regulatory purposes as of the end of 2021. Since then, organizations representing different market sectors have been advocating for guidance in addressing the various federal tax resulting from the need to amend existing documents to provide for alternative reference rates for the purpose of replacing LIBOR and other interbank offered rates ("IBORs").

In the United States, preparations for the phase-out of IBOR reliance have been led by the Board of Governors of the Federal Reserve System and by the Federal Reserve Bank of New York (the "NY Fed"). The NY Fed has undertaken responsibility to produce an alternative reference rate based on its observations of overnight United States Treasuries repurchase agreements (the "Secured Overnight Financing Rate" or "SOFR") and began daily publication of SOFR on April 3, 2018. In addition, the NY Fed convened the Alternative Reference Rates Committee ("ARRC"), which includes a broad cross-section of capital market participants, to address implementation issues, including the amendment of the documentation for existing transactions that rely on IBORs.

On October 9, 2019, the Department of Treasury ("Treasury") and the Internal Revenue Service (the "IRS") published proposed regulations (the "Proposed Regulations") addressing certain tax issues raised by the need to amend existing documents to provide for alternative reference rates in the Federal Register, https://federalregister.gov/d/2019-22042. Certain provisions of the Proposed Regulations are summarized herein as excerpted from an Advisory published by Hawkins Delafield & Wood LLP dated October 29, 2019, which can be accessed at https://www.hawkins.com/about/publications/2019-10-29-guidance-from-treasury-regarding-usd-libor-phase-out.

The Proposed Regulations generally provide that changes to existing debt instruments and to other contracts, including derivatives that are treated as qualified hedges for debt instruments, made to replace an IBOR-based reference rate with a "qualified rate" will not be considered a material modification for purposes of §1001 of the Internal Revenue Code, as amended (the "Code"), and therefor will not result in a sale or exchange of the instrument for federal tax purposes, regardless of whether the change takes the form of an amendment to existing documents or a substitution of documents. This guidance is incorporated into new section 1.1001-6 of the Treasury Regulations.

I. In General – The Instrument Will Not Be Considered "Substantially Modified"

An alteration to an existing debt instrument, derivative, or other contract that either (a) directly replaces an IBOR-based reference rate or (b) adds or amends a fallback provision[1] to reference a "qualified rate," not be treated as an exchange under § 1001, provided the fair market value of the instrument after the alteration is substantially equivalent to the fair market value of the instrument before the alteration and there is no change to the transaction currency. The same rule applies to "associated alterations," which are alterations that are both associated with the replacement of an IBOR-based reference rate and are reasonably necessary to adopt or implement that replacement. Such associated alterations may be technical, administrative or operational in nature and may include necessary adjustments to the frequency and timing of rating-setting, as well as spread adjustments and/or one-time payments attributable to the difference in value between the IBOR-based rate and the alternative reference rate, but not ones that are attributable to a party's current credit standing.

II. Qualified Rate Defined

A "qualified rate" consists of one of the following:

(a) The Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (SOFR)[2];

(b) Any alternative, substitute or successor rate selected, endorsed or recommended by the central bank, reserve bank, monetary authority or similar institution (including any committee or working group thereof) as a replacement for an IBOR or its local currency equivalent in that jurisdiction;

(c) Any qualified floating rate, as defined in §1.1275-5(b) (but without regard to the limitations on multiples set forth in §1.1275-5(b)), that is not described in (a), including in the footnote or (b) above;

(d) Any rate that is determined by reference to a rate described in (a), (b) or (c) above, including a rate determined by adding or subtracting a specified number of basis points to or from the rate or by multiplying the rate by a specified number; or

(e) Any rate identified as a qualified rate in guidance published in the Internal Revenue Bulletin for purposes of §1.1001-6.

[1] A fallback provision is a provision specifying how a variable rate of interest is to be determined if the then-applicable reference rate becomes unavailable or is otherwise judged to have deteriorated to an extent that it is no longer a suitable benchmark.

[2] In connection with instruments denominated in currencies other than the US dollar, the Proposed Regulations also identify as "qualified rates" each of the following: the Sterling Overnight Index Average; the Tokyo Overnight Average Rate; the Swiss Average Rate Overnight; the Canadian Overnight Repo Rate Average; the Hong Kong Dollar Overnight Index; the interbank overnight cash rate administered by the Reserve Bank of Australia; the euro short-term rate administered by the European Central Bank.

III. Alternation Must Result in Fair Market Value

The Proposed Regulations further provide that an alternative reference rate will be considered a "qualified rate" only if the fair market value of the instrument after the alteration is substantially equivalent to the fair market value of the instrument before the alteration. Fair market value for this purpose, may be determined using any reasonable and must take into account the value of any one-time payment that is made in connection with the alteration. The Proposed Regulations offer two safe harbors for purposes of determining fair market value, as well as the possibility of additional guidance in this area.

(a) Safe Harbors for Projecting Values to Compare Fair Market Value of the New Rate

(i) Historic average of rates. On the alteration or modification, the historic average of the relevant IBOR-referencing rate does not differ by more than 25 basis points from the historic average of the replacement rate, taking into account any spread or other adjustment to the rate, and adjusted to take into account the value of any one-time payment that is made in connection with the alteration or modification.

For this purpose, an historic average may be determined by using an industry-wide standard, such as a method of determining an historic average recommended by the International Swaps and Derivatives Association for the purpose of computing the spread adjustment on a rate included as a fallback to an IBOR referencing rate on a derivative or a method of determining an historic average recommended by the ARRC for the purpose of computing the spread adjustment for a rate that replaces an IBOR-referencing rate on a debt instrument.

(ii) Arm's length negotiations. The parties to the instrument are not related (within the meaning of §267(b) or §707(b)(1)) and the parties determine, based on bona fide, arm's length negotiations between the parties, that the fair market value of the instrument or non-debt contract before the alteration or modification substantially equivalent to the fair market value after the alteration or modification. For this purpose, the fair market value of the instrument after the alteration or modification must take into account the value of any one-time payment that is made in connection with the alteration or modification.

(iii) Additional Guidance from the Commissioner. Additional circumstances for demonstrating compliance with the fair market value requirement may be published in the Internal Revenue Bulletin. Additional circumstances for demonstrating compliance with the fair market value requirement may be published in the Internal Revenue Bulletin.

(b) Currency of the Interest Rate Benchmark

The Proposed Regulations further mandate that a qualified rate is a rate with an interest rate benchmark to which the rate refers after the alteration or modification and the IBOR to which the instrument or referred before that alteration or modification are based on transactions conducted in the same currency or are otherwise reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the same currency.

IV. Other Contemporaneous Changes

Any other alteration of an instrument that is contemporaneous with a change to an existing IBOR-based reference rate, including in respect of a fallback provision and associated alternations, as described above, is requirement to be analyzed independently from changes addressed by the Proposed Regulations for purposes of determining whether an instrument has been reissued under §1001. For this purpose, the alternative reference rate alteration and any associated alteration is treated as part of the existing terms of the instrument and becomes part of the baseline against which the non-alternative reference rate alteration is tested under the general reissuance rules.

V. Reissuance Concerns in Connection with Qualified Hedges

Rules similar to the foregoing apply under the Proposed Regulations to qualified hedges under section 1.148-4(h) of the Treasury Regulations. A modification to replace an interest rate referencing an IBOR with a qualified rate on a hedging transaction for bonds that is integrated as a qualified hedge under §1.148-4(h) for purposes of the arbitrage investment restrictions applicable to State and local tax-exempt bonds and other tax advantaged bonds (as defined in §1.150-1(b)) is not treated as a termination of that qualified hedge under §1.148-4(h)(3)(iv)(B), provided that the hedge as modified continues to meet the requirements for a qualified hedge under §1.148-4(h), as determined by applying the special rules for certain modifications of qualified hedges under §1.148-4(h)(3)(iv)(C).

VI. Source and Character of a One-Time Payment

For all purposes of the Code, the source and character of a one-time payment that is made by a payor in connection with the alteration or modification is the same as the source and character that would otherwise apply to a payment made by the payor with respect to the debt instrument or non-debt contract that is altered or modified.

VII. Effective dates

The provisions of Proposed Regulations §1.1001-6 apply to an alteration of the terms of an instrument that occurs on or after the date of publication of a Treasury decision adopting these rules as final regulations in the Federal Register. Taxpayers and their related parties may apply this section to an alteration that occurs before such publication date of final regulations provided the taxpayers consistently apply these rules before that date. The comment period for the Proposed Regulations expires on November 23, 2019.

The foregoing is intended to provide general commentary and should not be considered an opinion of Hawkins Delafield & Wood LLP. The foregoing is not intended to provide legal advice as a substitute for seeking professional counsel; readers should not under any circumstance act upon the information in this publication without seeking specific professional counsel.

* * *

Random Facts

- If you have 3 quarters, 4 dimes, and 4 pennies, you have $1.19. You also have the largest amount of money in coins without being able to make change for a dollar.
- The numbers '172' can be found on the back of the U.S. $5 dollar bill in the bushes at the base of the Lincoln Memorial.
- President Kennedy was the fastest random speaker in the world with upwards of 350 words per minute.
- In the average lifetime, a person will walk the equivalent of 5 times around the equator.
- Chrometophobia or Chrematophobia is the intense fear of money.
- Odontophobia is the fear of teeth.
- The 57 on Heinz ketchup bottles represents the number of varieties of pickles the company once had.
- The surface area of an average-sized brick is 79 cm squared.
- Karaoke means "empty orchestra" in Japanese.
- The Eisenhower interstate system requires that one mile in every five must be straight. These straight sections are usable as airstrips in times of war or other emergencies.

NAHEFFA Focus

The Association promotes the common interests of organizations which have the authority to provide capital financing for not-for-profit healthcare and higher education institutions and facilitates national advocacy, support, networking and education on behalf of its members. NAHEFFA focuses its efforts on issues which directly influence the availability of, or access to, tax-exempt financing for healthcare and higher educational institutions.

NAHEFFA Board of Directors

Officers:

President	Vice President	Secretary	Treasurer	Past President
Harry Huntley	Dennis Reilly	Rebecca Floyd	Don Templeton	Donna Murr
South Carolina	*Wisconsin*	*Kansas*	*South Dakota*	*Washington*

Directors:

Barry Fick	Mark Heller	Carol Johnson	Corinne Johnson
Minnesota	*Colorado*	*Washington*	*Colorado*

NAHEFFA Contacts

Harry Huntley
NAHEFFA President
1201 Main Street, Suite 1600
Columbia, SC 29201
(803) 737-0627
info@naheffa.com

Charles Samuels
NAHEFFA General Counsel
701 Pennsylvania Ave NW, #900
Washington, DC 20004
(202) 434-7311 p | (202) 434-7400 f
CASamuels@mintz.com