FEDERAL UPDATE

What to Watch for in the 118th Congress

BY MICHAEL BELARMINO

January 2023 marked the beginning of the 118th Congress. Let's look at what's on the horizon.

Short-term

The first 100 days of a new Congress are always critical in setting the tone for the year. Having managed to flip control of the House, the Republicans will need to notch some legislative wins—although that will be important for both parties because 2024 is a presidential election year, and both parties need wins for the campaign trail. The start of this session was rocky for Republicans, who had a historically difficult time electing a speaker—a vote that happens on the first day of the session. Without a speaker, the representatives-elect were unable to take their oath and begin official business for the first week of the session. This doesn't bode well for the party, given their slim majority; for any given piece of legislation over the next two years, the House speaker cannot afford to lose five votes. Otherwise, the legislation faces defeat or would require Republican concessions to garner Democratic support.

Nonetheless, despite the uncertainty around how productive the divided 118th Congress might be, there is still plenty for GFOA to focus on in the first 100 or so days. For one, GFOA's Federal Liaison Center will be making every effort to meet with each of the 80-plus freshmen members. Many are coming into office without prior governmental experience or background in public finance, so it is critical to meet with them and their staff to introduce them to the vital role that public finance officers play and what our priorities are.

Education will be needed in other areas as well. The House flipping to Republican control means that the composition of committees will change. The powerful House Committee on Ways and Means, which has jurisdiction over many public finance issues, will not only have a new committee chairman, but there will also be approximately ten new members for the majority. GFOA will need to work with these new committee members to explain public finance priorities and why these priorities are important to their constituents. And even though control of the Senate did not flip, a number of senators retired or departed from the Senate Finance Committee at the end of the 117th—so we will need to meet with new members on that side of Capitol Hill as well.

These meetings will likely last well into 2023. And that brings us to the mid-term legislative focus. While it would be ideal to have our legislative priorities introduced early on, it typically takes some time, especially as sponsors and cosponsors are sought and confirmed.

Mid-term

An effort that will hopefully support our attempts to advance important pieces of legislation will be finding opportunities to add members to the House Municipal Finance Caucus, one of the first requests we will make in meetings with members of the House. Because the caucus was designed to be bipartisan, we are seeking a Republican co-chair after the unfortunate passing of Congresswoman Jackie Walorski last year. Additionally, we will be trying to bolster Republican membership in the caucus.

Our first legislative priority is getting tax-exempt advance refunding reinstated. Until 2018, this critical tool allowed states and localities to refinance existing debt with the greatest flexibility, and it resulted in substantial reductions to borrowing costs. Unfortunately, the 2017 tax reform effort eliminated tax-exempt advanced refunding and limited the options for refinancing debt, which could free up capital and be put to immediate public works purposes. Without this valuable financial management tool, state and local governments will pay more in interest in the future, a cost that will in the end be borne by taxpayers.

But all the news isn't bad, as there have been several bicameral, bipartisan bills introduced over the last four years to reinstate tax-exempt advance refunding. In fact, one of the bills was included and passed by the House in the 117th Congress as part of infrastructure-related legislation that was ultimately not taken up by the Senate. We will look to our champions once again to reintroduce legislation in each chamber, help them to increase the number of sponsors, and generate enough support to convince leadership to bring the measures to the floor.

GFOA's second priority is increasing the bank qualified/small issuer exception. Bank-qualified bonds were created as part of the 1986 tax reform to encourage banks to invest in tax-exempt bonds from smaller governments that issue municipal bond less often, and to provide municipalities with access to the lower-cost borrowing they need to provide services and invest in schools, roads, bridges, and other projects. Unfortunately, the cap set to be considered as a small issuer is $10 million, an amount that hasn't changed since 1996. As you can imagine, especially in our current inflationary environment, $10 million does not get you far as it used to for major projects.

There has been some progress on this issue, as legislation was introduced to increase the cap and tie it to inflation. A bill to make these modifications was introduced last year in the House, which included it as part of infrastructure-related legislation that was not ultimately taken up by the Senate. GFOA will look to our champions once again to reintroduce legislation in the House and find bipartisan support. We will also need to find a champion to introduce a bill in the Senate, but we stand ready to help them increase the sponsor list.

Another matter of importance is the federal debt ceiling. It was not addressed in the most recent omnibus spending deal, passed in the final days of 2022. But it has previously been addressed through temporary suspensions of the limit. Currently, the debt ceiling is a bit less than $31.4 trillion. With Treasury's announcement that this limit was reached, they are now forced to use "extraordinary measures" to continue normal operations for some period after that. We concentrate on that expiration for a number of reasons but primarily for watching the Treasury's purchase of State and Local Government Securities (SLGS) for some current refunding.

Other legislative priorities might arise, as well. A number of provisions in the 2017 tax reform effort, like the cap on state and local tax (SALT) deductions, expire at the end of 2025, so the Republican-controlled House may try to make some of the provisions permanent.

We will also monitor the Treasury's implementation of the Inflation Reduction Act (IRA), although this is something Congress has already done its work on. GFOA will concentrate its efforts on the rulemaking process to ensure ease of application and access to the environmental tax credits for the public sector. And speaking of monitoring implementation, the Infrastructure Investment and Jobs Act (IIJA) is still moving along with many other programs preparing to go through another round of funding in the coming months. GFOA continues to monitor this and will post current funding opportunities via our IIJA Notice of Funding Opportunity (NOFO) Tracker.

Long-term

Looking out over the next two years, GFOA will continue to focus on the Financial Data Transparency Act (FDTA). Despite significant efforts by GFOA, our members, and other state and local government organizations, the FDTA was signed into law as part of the National Defense Authorization Act (NDAA) on December 23, 2022. The FDTA mandates governments to tag their financial information using a machine-readable format. The U.S. Securities and Exchange Commission (SEC) is responsible for enacting the data standards. Under the Administrative Procedures Act, the SEC is subject to congressional oversight. To address the situation, GFOA will rely on continued outreach from our members as the rulemaking process gets underway over the coming months.

These mandates are set to be in place in about four years (starting from the date of enactment), following the development of data standards by departments of the federal government, and more specifically by the SEC for municipal securities information. GFOA remains concerned that this is a significant unfunded mandate that places great cost and administrative burdens on governments and entities of all sizes. Governments will likely have to outsource this function or enable their current systems to create this format for the financial information used for the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) submissions.

Some changes that were made since the original legislation was introduced should be helpful to GFOA members:

- No new issuer disclosure requirements are associated with the legislation, which only seeks to require the way in which data will be submitted.
- GFOA and the issuer community will have a seat at the table as data standards are developed by the SEC.
- The SEC and other federal agencies must be helped to understand the impact rulemaking will have on governments and governmental entities. Your input will be needed along the way.

There is a long road ahead as rules are written and the taxonomy is developed before governments will be able to fully understand and implement these data standards. GFOA will lead the charge for issuers during what will be a long and arduous process to best protect governments and ensure the easiest and least costly ways to comply.

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