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Michigan Forward Denounces Emergency Manager Kevyn Orr's Barclays Deal for $350 Million

Orr's Executive Order #17 sets dangerous precedent and exposes Detroit to more Wall Street predatory lending

DETROIT – City of Detroit Emergency Manager Kevyn Orr's Executive Order #17 allows big banks and lawyers to step in front of Detroiters to collect first on city income taxes and casino revenues. Executive Order #17 proposes a $350 million Debtor in Possession (DIP) deal with Barclays Capital to pay off the termination fees on swaps with big banks Bank of America and UBS. Michigan Forward denounces this executive order, calls for the Detroit City Council to reject this deal and offer a counter proposal.

The DIP deal Orr, the city's Emergency Manager appointed by Governor Rick Snyder, has worked out with Barclay's is an unprecedented move in a municipal bankruptcy – Bond Buyer calls it the "first deal of its kind"[i]- and would set a dangerous precedent for municipal bankruptcies in the U.S., essentially allowing wealthy big banks to jump to the front of the creditors line while retired seniors are facing drastic cuts in the retirement income they depend on.

"US Bankruptcy Judge Steven Rhodes has told Bank of America and UBS that they can't jump ahead of Detroit's obligations to its retirees and pensioners," says Brandon Jessup, C.E.O . of Michigan Forward Urban Affairs Group. Kevyn Orr's proposal secures $250 million in 'termination fees' for the same bad interest rate swaps that sunk Detroit's credit rating and finances in the first place. Detroit City Council must stand up for Detroit's constitutional obligations first, not allow banks to bully them around. The issue brief released by our foundation, Michigan Forward, details the ills of Executive Order #17, and why Detroit City Council must reject it."

"This is just another example of big banks pushing predatory deals onto cash-strapped cities," said Saqib Bhatti, a fellow at the National Cummings Foundation. "The purpose of this special financing deal is to ensure that Bank of America and UBS can cash out on their swap deals with the city before a penny goes towards city services."

Michigan Forward will join progressive partners including Detroiters Resisting Emergency Management (D-REM), Free Detroit/No Consent, Moratorium Now and Detroiters who support transparency, accountability and good government to address the pending Barclays deal for $350 million. Michigan Forward and allies called for the Detroit City Council to oppose Executive Order #17 Monday, October 21 at 11 a.m. in front of the Coleman A. Young Municipal Building. Predatory lending led by Wall Street banks and lawyers have cost the city over $1 billion dollars in the last decade.

Civic groups are joining in coalition to call for US Bankruptcy Court Judge Stephen Rhodes to reject the municipal bankruptcy filed by the State of Michigan on Wednesday, October 23, 2013. Progressive groups are calling for transparency and accountability throughout Detroit's emergency management process. Detroiters are standing up for their homes, pensions and community to oppose the illegal and unconstitutional bankruptcy proceedings led by Gov. Rick Snyder and Detroit Emergency Manager Kevyn Orr. Detroit's recovery and reorganization process must be led by the residents of the city of Detroit not corporate interests.

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[i] http://www.bondbuyer.com/issues/122_198/detroit-wins-350m-dip-loan-from-barclays-1056450-1.html

Proposed Debtor in Possession deal to Barclays sets dangerous precedent in municipal finance.

The proposed load from Barclays Capital will allow Wall Street banks an opportunity to leave Detroit seniors, retires and working families saddled with bad debt. Detroit Emergency Manager Kevyn Orr's Executive Order #17 allows big banks and lawyers to step in front of Detroiters to collect first on city income taxes and casino revenues. Executive Order #17 proposes a $350 million Debtor in Possession (DIP) deal with Barclays Capital to pay off the termination fees on swaps with big banks Bank of America and UBS.

Michigan Forward denounces this executive order, calls for the Detroit City Council to reject this deal and offer a counter proposal.

The first deal of its kind. The DIP deal Kevyn Orr, the city's Emergency Manager appointed by Governor Rick Snyder, has worked out with Barclay's is an unprecedented move in a municipal bankruptcy – Bond Buyer calls it the "first deal of its kind"[i]- and would set a dangerous precedent for municipal bankruptcies in the U.S., essentially allowing wealthy big banks to jump to the front of the creditors line while retired seniors are facing drastic cuts in their retirement income.

Executive Order #17 puts big banks in front of our seniors and city retirees, costing them up to 90% of their income to secure hundreds of millions in Wall Street predatory lending.

Municipal finance experts and the financial press are starting to scrutinize the proposed deal and are raising this point. For example, Matt Fabian, managing director at Municipal Market Advisors, is quoted in an October 16th Bond Buyer article saying "The state and the restructuring community wants this kind of financing to work so as to facilitate future bankruptcies...The state is doing what it can to make sure DIP lenders are protected and repaid." [ii]

Since 2008, Detroit has sent nearly $800 million in unnecessary payments to Wall Street banks, including a $550 million payout just last year. Now Barclays stands to profit from Executive Order #17, a bad settlement deal to pay $250 million to terminate bad interest rate swap debt from 2005.

These interest rate swaps were supposed to protect the City of Detroit from rising interest rates on city debt. In short, the City of Detroit would switch to a fixed interest rate; if interest rates increased, Bank of America and UBS would pay Detroit the difference; if the rates fell the city would pay. These swaps didn't help Detroit; by 2009 both city credit and interest rates were falling and the city was locked into a fixed interest rate. Detroit was forced to pay banks $50 million a year and pledge nearly $11 million in casino revenue as additional collateral. Under this new deal, the Barclays loan is secured with income tax and casino tax revenue, and net cash proceeds from the possible sale or lease of city assets exceeding $10 million.

The loan repayments would have priority over all other post-petition claims, and pre-petition unsecured claims, according to an analysis by Crain's. [iii] And, in addition to an undisclosed "commitment fee" Barclays would get, the loan carries an interest rate based on the London Interbank Offered Rate plus 2.5%, plus a 1% LIBOR floor, translating into an effective rate of 3.5%. If the city defaults, the spread rises by another 200 basis points.

MICHIGAN FORWARD

ISSUE BRIEF

October 21, 2013

The actions taken in Detroit by Governor Snyder and Detroit Emergency Manager Kevyn Orr are exploiting the unprecedented power under Public Act 436 of 2012 to continue to place the city of Detroit and its residents at the mercy of big banks. Michigan legislators can take steps to protect financially distressed communities in their district by repealing Public Act 436 and securing streams of revenue to local municipalities.

- **Repeal Public Act 436 of 2012 and Replace Municipal Revenue Sharing.** Michigan's municipalities continue to experience financial difficulty, crisis and receivership under Gov. Snyder's tax reforms. These reforms give big business billions funded by cuts to education and state revenue sharing. Michigan Forward calls for the repeal of the Emergency Manager law with a replacement municipal revenue sharing reform that allows increased access for municipalities to private activity bonds in partnership with the state of Michigan.
- **Help Michigan's municipalities collect local tax revenue.** Legislation introduced in 2012 (HB 5806) by former state legislator Lisa L. Howze would reform Michigan local tax policy to require the withholding of local income taxes. This legislation would have provided over an additional $100 million in income tax revenue to the city of Detroit alone in 2012. Closing tax loopholes help improve the health of Michigan municipalities that levy a local income tax including Detroit, Flint and Battle Creek.

Congress must take action. As pointed out by the New York Times[1], banks receive special treatment when debtors are in or near bankruptcy. The unconstitutional filing for municipal bankruptcy by the State of Michigan for the city of Detroit is a radical attempt to liquidate public assets without earning the faith of the people of the city of Detroit. Under emergency management, Executive Order #17 seeks to expose Detroit to more loopholes in how municipalities and Wall Street interact, by ignoring the court order by Judge Rhodes with a side-deal with Wall Street giant, Barclays.

Since the passing of the Dodd-Frank financial reform law, the Securities and Exchange Commission has been charged with providing "enhanced protection" for municipalities and their dealings with the financial industry. Unfortunately, the Securities and Exchange Commission has not completed these rules, so the many loopholes that would eliminate "termination fees" in bad interest rate swaps deals remain open. Congress must call the SEC and the Commodity Futures Trading Commission to strengthen its regulations to end the exploitation of public finance, pensions and municipalities.

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[i] http://www.bondbuyer.com/issues/122_198/detroit-wins-350m-dip-loan-from-barclays-1056450-1.html
[ii] http://www.bondbuyer.com/issues/122_200/detroits-dip-deal-could-pave-way-for-bankrupt-financing-1056553-1.html
[iii] http://www.crainsdetroit.com/article/20131011/NEWS/131019959/#
[iv] http://www.bondbuyer.com/issues/122_200/detroits-dip-deal-could-pave-way-for-bankrupt-financing-1056553-1.html
[v] http://www.bondbuyer.com/issues/122_200/detroits-dip-deal-could-pave-way-for-bankrupt-financing-1056553-1.html
[vi] http://www.bondbuyer.com/issues/122_200/detroits-dip-deal-could-pave-way-for-bankrupt-financing-1056553-1.html
[vii] http://www.bondbuyer.com/issues/122_198/detroit-wins-350m-dip-loan-from-barclays-1056450-1.html

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[1] http://www.nytimes.com/2013/08/16/opinion/no-banker-left-behind.html?_r=0