



Public Entity News & Views, Q4

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Introduction

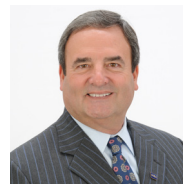
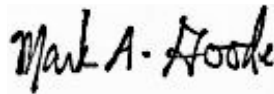
Happy holidays!

It seems inconceivable that another year draws to an end. In retrospect, what a year it has been. All of us have been challenged in so many ways; yet, somehow, if you are like me, we still have much to be thankful for. Despite obstacles faced, we continue to find ways to keep our families and friends close and to provide advice and counsel for our clients. As we bring the year to a close, let's keep the less fortunate in mind and do what we can to support the physical, emotional and mental wellbeing of all.

I sincerely wish you and yours a safe, healthy and happy holiday season and all good wishes for a great 2021.

With best regards,

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Climate change – The risk, costs and mitigation tools

In a 2019 report, for the fourth year in a row, a leading survey of diverse global experts identified climate change as the number one emerging risk for the next five to 10 years. According to the survey, the consensus on the matter is strong and growing, with survey respondents identifying climate change as a top-five risk, increasing from 39% only two years ago to 67%, naming it the most important emerging risk last year.¹

Climate risk as a critical issue is now clear as record losses demonstrate its financial materiality. In a report released last year surveying the risk and opportunities created by climate change, submissions from the world's largest corporations, including U.S. companies representing nearly \$17 trillion in market capitalization, estimated that they face approximately \$1 trillion in costs related to climate change in the decades ahead unless they take proactive steps to prepare for this risk. The survey respondents, ranging from Silicon Valley companies to large European banks, are facing the prospect that climate change may substantially impact their financial fortunes within the next five years. The companies estimated that at least \$250 billion in assets may need to be written off or retired early as climate change causes higher temperatures. Among those assets are buildings in high risk flood zones and power plants that may have to be shut down in response to tighter pollution rules.² A report issued earlier this year by the Bank for International Settlements in Switzerland, an umbrella organization of the world's central banks, argues that climate change will cause the next financial crisis.³

Climate change is having an immediate effect on the financial markets. According to the global credit rating agency Moody's Investors Services, it will soon be a growing negative credit factor for issuers without sufficient adaptation and mitigation strategies.⁴ The Moody's report, *Evaluating the impact of climate change on U.S. state and local issuers*, quoted its vice president as warning that even if states and municipalities adopt mitigation strategies for extreme events, "costs to employ them could also become an ongoing credit challenge." According to Moody's analysis of economic strength and diversity, "access to liquidity and levers to raise additional revenues are also key" to its assessment of climate risks, along with "evaluating asset management and governance."

In direct response to climate-related natural disasters of 2017, the U.S. Congress appropriated \$136 billion for recovery efforts.⁵ In 2019, there were 14 weather-related disasters in the U. S., each causing damages in excess of \$1 billion, the fifth year in a row in which 10 or more such disasters occurred.⁶ The National Oceanic and Atmospheric Administration (NOAA) reports that the average number of disasters giving rise to over \$1 billion in damages in the U.S. in the last five years is more than double that amount over the past four decades.⁷

The United States Fourth National Climate Assessment Report (November 2018) concludes that climate change is increasing the number of new risks and exacerbating existing vulnerable communities, challenging safety, quality of life and economic growth.⁸ The report also warns that climate-related global warming "is expected to cause substantial net damages to the U.S. economy throughout this century, especially in the absence of increased adaptation efforts."⁹

State and local governments' ability to shoulder these increased costs of disaster relief is very limited since they cannot borrow money as the federal government can. Consequently, they turn to federal relief agencies for help. However, along with other factors, such as banks offloading risky mortgages to Fannie Mae and Freddie Mac¹⁰ and FEMA's \$20.5 billion NFIP debt,¹¹ the federal government's sharply increasing disaster spending threatens its low borrowing cost. The U.S. federal deficit exceeded \$1 trillion in 2019¹² and is expected to reach \$4 trillion this year.¹³ Fitch has noted that a short-term risk of downgrades in U.S. credit ratings increases in light of economic trauma and as debt projections rise.¹⁴ To fund climate-related disasters as projected, this debt will only continue to rise. The global investment management firm, Black Rock, has estimated there will be a 275% increase in major hurricane risk by 2050 under a scenario that assumes the continued use of fossil fuels without the necessary steps needed to address climate change consequences. As a part of its analysis, Black Rock's white paper on the subject points to the Moody's warning that climate change will affect the future credit worthiness of state and local issuers.¹⁵

As recently as September 2020, a subcommittee of the federal regulator overseeing the nation's commodities markets, the Commodities Future Trading Commission (CFTC), issued a landmark report warning that climate change threatens the U.S. financial markets as the cost of disasters such as wildfires, storms, floods and droughts cause major and devastating impacts on the insurance and mortgage markets, pension funds and other financial institutions.¹⁶ The 196-page report is the first wide ranging federal government study focusing on the risks of climate change on Wall Street. The report calls for many climate-driven policy changes in order to avoid the most immediate effects of climate change, which it identifies as falling home prices and rising mortgage default rates in areas where storms, fires and other disasters regularly occur. Among the report's express recommendations is to put a financial price on carbon emissions that can either be taxed or paid for by a trading system involving credits. The report also recommends the reversal of a Labor Department rule that forbids retirement investment managers to consider environmental impacts in making financial recommendations. Finally, the report makes the case for other agencies, such as the SEC, to strengthen requirements that climate change impacts be disclosed or considered when reporting on companies' financial stability.



Mitigation strategies

Around the world and in the U.S., the fight to halt the advancement of climate change and to minimize its effects has taken many forms. Among them is a fascinating system to control the effects of severe flooding in the Netherlands. Only 50% of the Netherlands is more than a few feet above sea level, making it one of the most flood prone areas in the world. The geography of the Netherlands is such that fierce storms with hurricane strength winds coming from the North Sea cause enormous storm surges. After a 1953 storm that broke levees and dikes, killing almost 2,000 people, the Dutch government put in place an elaborate system of flood infrastructure and has continued to tweak the system as data mandates. As a result, the Dutch have not suffered a death from flooding in 65 years. The original system took six years to build and cost over \$500 million.¹⁷

In the 1990s, when flood waters eclipsed the original infrastructure of barriers and gates, the Dutch implemented new and improved flood prevention projects to adapt, making them a leader in knowledge and expertise to other vulnerable nations.¹⁸ The post-1990 programs, called Room for the Rivers, give more space to the water rather than trying to confine it. By allowing the rivers to expand when large volumes of water are present, the Dutch have ceased fighting against water and instead are living with it in many instances. They accomplish this in part by buying out residents in flood prone areas and by allowing certain areas to flood to keep others from flooding. The Dutch now describe their flood management system as one that practices protection, prevention and preparedness.¹⁹

Communities in the east coast of the U.S. experienced Hurricane Florence flooding in 2018 (dumping record rainfall of more than 35 inches in North Carolina alone) which destroyed thousands of houses and cost dozens of lives. Only two years earlier, Hurricane Matthew caused similar damage to the area. Before that, it was Hurricanes Katrina, Sandy, Harvey and Maria, costing hundreds of billions of dollars in losses. Unlike the government system of flood management in the Netherlands, in the U.S., the general model has long been to pay people for their storm damage and allow them to continue to rebuild at the same location. In this regard, the U.S. disaster system is deemed solution-oriented (rebuilding and repairing) while the Dutch system is based on prevention of impacts from unpreventable flooding.

This year, however, several federal agencies have taken steps to address aspects of disaster relief policy that will serve to shift the U.S. to a model much closer to that of the Dutch, commonly known as managed retreat. In August 2020, the Federal Emergency Management Agency (FEMA) detailed a new program (Building Resilient Infrastructure and Communities) costing some \$500 million initially, with billions to follow, to pay for large scale relocations nationwide.²⁰ The program represents a major federal change in policy, since it recognizes the fallacy of rebuilding over and over after successive floods and other disasters and is designed instead to pay for large scale relocations nationwide. In addition, the Department of Housing and Urban Development (HUD) has initiated a similar \$16 billion program²¹ and the Army Corps of Engineers has implemented a policy that requires local governments to agree to force relocations or forfeit flood protection project monies.²² The HUD program is the first time these types of funds have been used to prepare for disasters that have not happened yet. This major move by the federal government to finance buyouts on a large scale represents a broad political and psychological shift in U.S. disaster policy.

In the U.S., however, there is a series of other smaller scale proposed climate change mitigation initiatives on the table. One of those, put forward by the Smart Surfaces Coalition, a group of 30 partners, including the National League of Cities and the American Institute of Architects, proposes a strategy advocating changes to exterior surfaces. This strategy includes the use of highly reflective roofs, porous and reflective pavements, roads and parking lots, green roofs and trees. According to the Coalition, these strategies, if implemented, will change the management of such weather conditions as heat and rain, leading to reduced costs and risks. Cities implementing these changes can expect to experience positive impacts on their livability, safety and comfort. Experts predict, however, that cities not implementing smart surface strategies will likely encounter increased climate-related losses, increased reduction of credit ratings and resulting increases in the costs of borrowing, all leading to the significant risk of municipal insolvency. The net present value of nationwide adoption of smart surfaces is \$7 billion, according to the Coalition.²³



Another initiative addresses climate risks to outdoor workers, who are facing increasing health threats as a result of climate induced higher temperatures. These risks include dangerous increases in blood pressure, dehydration and organ failure, all induced by heat, aided by humidity. For example, in a four-year span, UPS reported some 107 known heat-related hospitalizations among its drivers. It is highly likely that heat illnesses at UPS among drivers is much higher than that reported because heat illness can resemble other illnesses, and heat induced heart attacks can go unrecognized.²⁴ UPS is not alone. Mail deliverers, construction workers and farmers are among the many outdoor workers in large industries who perform their work under dangerous conditions.

In response to these dangers, UPS initiated a program called “Cool Solutions,” which requires employee education on heat illness symptoms. Others have proposed additional solutions that include:

- Making shade breaks mandatory
- Investment in breathable fabric uniforms
- Investment in wearables that monitor employee body temperature and heart rates
- Installation of cooling gel seat materials for delivery vehicles, at a minimum

Ultimately, however, it is major action by the U.S. and other governments globally that will play the largest role in decreasing the financial and other risks of climate change. Government actions are needed to reduce greenhouse gasses and property exposures to climate-related storms and other disasters. Among proposals long considered is a carbon tax. Carbon taxes could stem the rising costs of addressing climate change as they increase revenues and encourage critical industries to reduce emissions. In this way, credit rating downgrades may be avoided, and future disasters relating to carbon emissions may be decreased or averted.

Insurance/financial services industry response

The response to the threats of climate change by the insurance and financial services industries has been swift and has real promise. In general, the industries are taking greater control of adapting to climate-related risks. Among the initiatives that have been introduced are climate stress testing for financial disclosures and growing teams that analyze and evaluate natural hazard risk and weather extremes. The financial services sector is seeing a growing demand from clients for:

- Risk and scenario modeling using the latest science
- Climate risk audits and stress testing
- Asset analysis based on environmental, social and governance principles and development of more sustainable climate-resilient portfolios
- Analytical support for climate-related financial reporting and other regulatory requirements

Willis Towers Watson launched Climate Quantified at the World Economic Forum in 2020 after successful deployment of tools and experts with partners and clients during 2019. Currently, we are working with clients around the world to quantify climate risk and support current and future climate risk management.

Our experience proves that insurance can incentivize risk-smart behavior and stewardship of the environment. Among Willis Towers Watson’s insurance solutions are policies for coastal and terrestrial natural capital, insurance structures that de-risk investments in marine parks and ecosystem restorative projects. Willis Towers Watson tools include:

- Using catastrophe modeling to understand and quantify risks to natural capital
- Designing insurance products that de-risk natural capital investments
- Increasing natural capital “bankability”

Each solution benefits from close collaboration with environmental nonprofit organizations, community leaders and business beneficiaries to bring financial protection to nature-based solutions, to provide economic relief in the face of disruption and to incentivize nature-based solution stewardship.

We offer parametric insurance solutions, a breakthrough in the accessibility of risk financing for climate/natural disasters. Designed to provide fast liquidity in times of crisis, parametric solutions focus on the financial impact of an event rather than on the loss and thus transfer the financial impact to the reinsurance capital markets. This allows for rapid settlement and reduced costs of claims adjustment/processing. While traditional insurance has certain limitations (loss adjustment process is expensive and time consuming, pays only if weather damages owned assets and does not cover wide area disruption), parametric expertise has taught important lessons relating to interim liquidity, flexible coverage, transitioning to pre-disaster risk reduction and risk pooling.

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Combating the Bermuda Triangle of Higher Education

Financial benchmarks and projection models employed for decades by business and accounting professionals engaged by institutions of higher learning to prepare annual budgets, grow surplus accounts and guide investments have suddenly been rendered useless. Within the first few months of the COVID-19 scare, colleges and universities knew they were in financial trouble as revenue dried up while expenses piled on. Rebuilding financial platforms to project a year into the future is going to be difficult with a war waged on three major fronts: 1) COVID-19, 2) the insurance hard market and 3) the unrest surrounding social injustice. Facing one of these challenges would exhaust any business contingency strategy, but combating this “*Higher Education Bermuda Triangle*” has already sent up white flags at institutions struggling to remain solvent.

University and college powerhouses will make it through to the next stable period, but small to midsize private institutions with weak endowments will struggle. Even before the pandemic hit, a number of colleges were in trouble financially.

Institutions no longer accepting new student applications, such as the San Francisco Institute of Art, is a tell-tale sign the end is potentially near, and closure is looming. Lawrence M. Schall, president of the New England Commission of Higher Education and a former president, inherited a debt-ridden university. In a recent higher education article¹ he stated that an institution must meet nine standards to achieve accreditation, and the failure to meet Standard No. 7: Institutional Resources, means the financial resources can no longer support the college’s mission.

The lack of fiscal management in higher education has made preparing for a crisis extremely difficult. Beyond the historic levels of bureaucracy that stymie necessary quick decisions, the industry as a whole is up against misaligned strategic planning and attitude.

Resources

Most university and college operations are paid for by revenue from tuition. It has been a relatively stable approach over the years with variations in enrollment riding the peaks and valleys of the U.S. economy. Recruitment strategies adjust to capture the ebb and flow of the number of high school graduates, changing demographics and other past data to predict trends and subsequently establish tuition costs. Endowment business models follow similar strategic planning steps by keeping pace with successful graduates and legacy donors based on data sources. Another part of the funding track comes from government appropriations and grants. There isn’t much control of this process because it lies at the mercy of elected officials. One variable that often separates an institution from its competition is the ability to build an auxiliary financial pipeline through successful sports programs, third-party partnerships, and extending its institutional academic footprint around the world. Although these resources do fluctuate based on various modifiers, the data and the analysis of how that data is viewed mostly remains constant. The stagnant workforce resulting from hiring those who have only worked in higher education leads to scant room for innovation in the business and operations of the college.

Misaligned strategic plans

The mission of all institutions starts and ends with academics. After all, an institution thrives on attracting and educating students to make them successful enough eventually to enable them to give back by donating money or, better yet, enroll their children in the future. It is a cycle that churns the machine, and it requires hiring the best faculty that can be afforded.

The strategic planning process on a campus is designed to identify the necessary components that will shape and grow the institution. It is a widely accepted process that manifests as a document of goals and objectives for the various leaders to complete in order to uphold the mission of the institution. With academics being the central focus, most strategic plans are naturally weighted in that direction. However, the infrastructure that supports the academic model needs the appropriate attention in the planning document to promote the continuation of the institution's mission. This is the Achilles heel that leaves a university or college vulnerable during a crisis if not enough attention is given to maintaining the infrastructure. Strategic planning documents are littered with terms like *growth, advance, positive outcomes, build, develop, generate, increase*, etc. What you find is a how-to guide to spending with little attention toward how to pay for it. Keep in mind that increasing enrollment, which in turn increases tuition income, only financially supports the operations of the college and is not intended to pay for the new academic building or residence hall to house the student expansion. This unfortunately also adds to another budget-draining list...deferred maintenance.

Attitude

Higher education has always been a "Teflon" industry when it comes to employee downsizing. In the past when the nation's economy dipped, most institutions shielded their workforce from layoffs electing to simply freeze requests for new hires. Usually, the faculty was considered untouchable and, therefore, hiring restrictions didn't apply. The power of employee and faculty unions coupled with a leadership fearful of receiving a vote of no-confidence from campus academia protected human capital from being used as a remedy to balance the budget. This past attitude of not studying this major expense line in the institutional budget when the overall economy is in trouble is catastrophic – especially when the biggest slice of a college's budget is compensation.

Enter mergers and acquisitions

Some institutions of higher learning have already taken to a path of merging, but the experts agree that merging when there is no cash on the balance sheet leaves little to negotiate with. Thus far in 2020 alone, the following institutions announced merging all or part of their assets:

- Pacific Northwest College of Art (OR) to merge with Willamette University (OR)²
- Martin Methodist College (TN) to become a part of the University of Tennessee System (TN)³
- Emerson College (MA) to procure the majority of Marlboro College's (VT) assets after that institution already closed in 2019⁴
- Wesley College (DE) to be acquired by Delaware State College (DE)⁵
- Boston College (MA) to acquire Pine Manor College (MA)⁶
- Watkins College of Art (TN) to merge with Belmont College (TN)⁷

The realities of today's pandemic, the hardship of the insurance market and the social unrest on campus have revealed that the college business model appears to have outlived its time. Many institutions seem to be financially managed like the federal government, piling up debt faster than determining how to pay for it. Lawrence Schall faced this identical situation when taking the reins of a college, according to the trade magazine *Inside HigherED™*. His approach was simple: align expenses to match actual revenue, make the board responsible and charge the executive leadership with making it work.

The process of merging entire campus cultures into one harmonious system is indeed a pipe-dream due to the imbalance of power. A college merge usually occurs because one campus can't survive, and the other college has the capital to take on the debt and in essence, therefore, dictates the terms for the future. That merging of relationships usually doesn't fare too well, as played out this past fall when the president of the Watkins College of Art was subpoenaed to appear in court over the impending merge with Belmont College. According to an Inside Higher Ed article, the courier who attempted to serve the court papers at the home of the president was met with a gun pointed at him by the husband.⁸



These are not marriages made in heaven.

Another reality working against survival is the geographic locations of many colleges. Some institutions are clustered within a few miles of each other and struggle to promote what makes them different (and better) than a neighboring school. Small to mid-market private colleges are particularly vulnerable to this threat.

So, is merging really the answer, or is it just a way for a larger predator to devour the competition in its backyard? Some would argue it is a question of campus overload; the smaller schools need to go away because they are outdated.

Remember the statement of aligning expenses with anticipated revenue as a process toward financial sustainability? It seems like Budget Management 101, but the biggest expense on the balance sheet is payroll, and leadership can't simply hack away at jobs to rectify the issues — plus doing so can create bigger problems. Case in point is the Berkeley Social-Injustice Institute that is slated to close. The leadership cites poor financial stewardship and an aged facility close to collapse as the central reasons. Despite assurances from campus decision makers that they've been transparent in the matter and will make efforts to find new locations for the programs, Injustice Institute supporters claim racial disparity in the face of one of the nation's most liberal college systems.⁹

Collaboration over merging

Consolidation is more of what higher education needs to do to ward off an impending takeover or worse, a total collapse. But in these turbulent times, the emotional element needs to be removed from the decision making so a proper objective analysis of people, processes and programs can be performed. This also includes the reconstruction of benchmarks and financial standards. Running analytics across many disciplines, including cybersecurity, will quickly add to the process of determining what needs to be consolidated or eliminated. Data doesn't lie, but it can be misinterpreted through improper assessments by those who don't want change. Outside experts in actuarial science and data analysis can begin to design a path to recovery without an internal hidden agenda that on-campus evaluators may possess.

Throughout the most recent semester, sports programs have been a big target for reduction or elimination, and with that goes jobs and perhaps large donors. Some schools have gone back and changed their decision to cut sports based on negative publicity. Merging, slicing and dicing without the proper analysis of data is not only foolish, it leads to poor decisions and having to confront another challenge: repairing the reputation of the institution.

Building partnerships avoids going it alone

The path toward sustainability requires an institution to consolidate and partner with other institutions where duplication occurs and to generate a business model that supports each other. The use of consortiums in risk management has helped lower insurance premiums and provided better loss control among the members. The sharing of facilities is another way to alleviate expense pressure. In Maryland, Loyola University and Notre Dame University share a library. With one facility serving both institutions, the cost savings can help complement any expansion that may be needed. Health centers and medical services can certainly extend resources and services in a non-partisan way to help neighboring colleges. Athletic facilities and services for student and employee wellness programs can be shared and are a good way for some institutions to mitigate the cost of maintaining facilities, employing staff and assuming unnecessary liability. At the Maryland Institute, College of Art, faculty, staff and students could take advantage of the gym facilities of the University of Baltimore, one city block away. There are also auxiliary services, such as printing operations, mail services and café services to name a few, that can share equipment costs along with talent across the thresholds of many campuses. There are strong inter-institutional arrangements in place for building solutions in focused committees based on topics such as admissions, residential life, facilities and event management, athletics, etc. Revenue splits and expenses may require in-depth analytical and actuary expertise to work out equitable and profitable sharing formulas. Also, managerial responsibility, staffing, transportation schedules, etc. all lend themselves to a strong third-party partnership which can be managed by a consortium. It is this type of collaborative effort that may help struggling institutions turn around and begin to thrive again.

Sadly, when all else fails, for some it will be time to consider the M&A (mergers & acquisitions) process – a term once reserved only for private business – as the phenomenon of the *Bermuda Triangle of Higher Education* will certainly become more prevalent for years to come. Each decision going forward will be tested from a variety of different perspectives; it is paramount to team with a broker or specialist with the global expertise to assist in bringing the right solutions to the right campus.

The one certainty is hope

With the COVID-19 vaccine on the horizon, the immediate future is still bleak for many institutions that have been fighting financial battles for years. The war for them is lost despite the battle that will be won (eventually) warding off the pandemic. For the remaining universities and colleges attempting to stay afloat financially, the framework of the campus culture will require business to be conducted in a way that mirrors the rest of society. This undoubtedly will equate to far more third-party business relationships being formed to prop up institutions and move the needle back in the right direction for the industry of higher education. The days of taking solutions off the shelf or touting a one-size-fits-all approach have passed. It is a new day, especially when it comes to sustaining the financial balance sheet in higher education; each and every institution must find the right path to take the next step.

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New mapping reveals hidden flood risks

On June 29, 2020, a nonprofit research and technology group, First Street Foundation, released flood risk data for more than 142 million homes and other properties across the U.S. that suggests a far greater flood risk in most places than current FEMA/NFIP mapping.¹ FEMA stated it welcomed First Street's initiative and that it would be used to complement FEMA's efforts.

This new report takes into consideration sea level rise, rainfall and flooding along smaller creeks not currently mapped by FEMA. According to the new calculations by First Street, some 14.6 million properties are at risk for damage from a 100-year flood (one with a 1% chance of striking in any given year), which is considerably more than the 8.7 million estimated by the FEMA maps, representing a 70% increase. When adjusted for future environmental factors, such as changing sea levels, warming sea surfaces, atmospheric temperatures and changing rain patterns, First Street's model finds the number of properties at substantial risk of flooding, reaching 16.2 million by 2050.

Flood maps are critically important as they guide building decisions and decisions about which properties require owners to purchase some form of flood insurance. Mortgage lenders are particularly interested in accurate flood maps because they guide them in terms of the risk they undertake when making loans. The fact that current federal flood maps are considerably out of date means important financial decisions have been and continue to be made based on inaccurate information. The consequences are considerable.

First Street's model was developed by more than 80 hydrologists, researchers and data scientists representing some of the top universities in the country and is based on decades of peer-reviewed research. Based on this research, supplemented by data from FEMA, USGS and NOAA, the report produced the country's first publicly available comprehensive flood risk model. As a part of its report, First Street's website allows property owners to check their property to see if it is situated in the 100-year flood zone or not.²

FEMA flood maps have long been thought to be inaccurate.³ In some areas, FEMA has not done any mapping and in others, its mapping is over decades old. However, every attempt by FEMA to update its mapping for flood insurance purposes has been met with strong objections. Homeowners and public officials do not want property owners in their geographic areas to be charged the much higher flood insurance premiums that would be necessary to cover the new risks if accurate flood mapping were available. Mapping such as that needed to update FEMA's maps is costly and labor intensive, but the biggest obstacle to updating them is fear of higher costs for flood insurance and the fact that many more property owners may well be required to purchase flood insurance based on updated map results. The former head of the NFIP until 2018, Roy Wright, suggests that since there is no way for property owners to fight higher flood insurance rates, then they fight the maps. According to Mr. Wright, "It turns into house-by-house combat."⁴

Many of the results of the First Street report were startling. For example, many inland areas, including large parts of Appalachia and several major cities, saw significant increases in the number of flood-prone properties according to these maps. In both Chattanooga, TN and Charleston, WVA., FEMA maps show well under 10% of the properties in floodplains. First Street maps suggests the percentage to be 33% or greater.

Many large cities' maps show tens of thousands of properties at risk for flooding not shown currently on government maps. Chicago tops the list. There, current FEMA maps show only 0.3% of that city's more than 600,000 properties inside the 100-year flood zone. First Street mapping reveals that almost 13% of city properties face that risk, 75,000 more than FEMA maps show. Adding to concerns about the new mapping results is the fact that the increased hidden risks are located predominantly near Chicago's south side where 95% of the city's African American population resides. FEMA maps show none of these properties within the 100-year flood zone, but First Street maps indicate that 1/3 of such properties are at risk. The disparity is consistent according to the First Street maps. In more than 2/3 of the states in the country, areas with more minority residents had a far greater share of unmapped flood risks than the statewide averages.

In terms of shoreline mapping, with the exception of areas along the Mississippi River and the Gulf Coast, where more government mapping studies have been conducted, First Street mapping shows a wide gap between FEMA maps and theirs. In Fort Lauderdale, for example, FEMA maps show 41% of the city within the 100-year flood zone. First Street maps

indicate the number is closer to 2/3 of the properties, or about 13,000 more properties. Again, as in Chicago, the areas of Fort Lauderdale with deficiencies appear to be those with the greatest minority populations. FEMA indicated it is in the process of updating Fort Lauderdale's mapping, but already there is a plan to fight the results due to concerns about more properties requiring the purchase of flood insurance.⁵

FEMA mapping is a critical problem facing the country as so many important decisions are made based on it by homeowners when making purchase decisions, by mortgage companies making lending decisions and by the federal government deciding how best to fund the NFIP for real risks. If FEMA does not start relying more on the comprehensive mapping work of groups like First Street or performing comprehensive remapping itself, the country will face disaster-relief financial disasters on an increasing basis.

Sources

¹ https://assets.firststreet.org/uploads/2020/06/first_street_foundation_first_national_flood_risk_assessment.pdf.

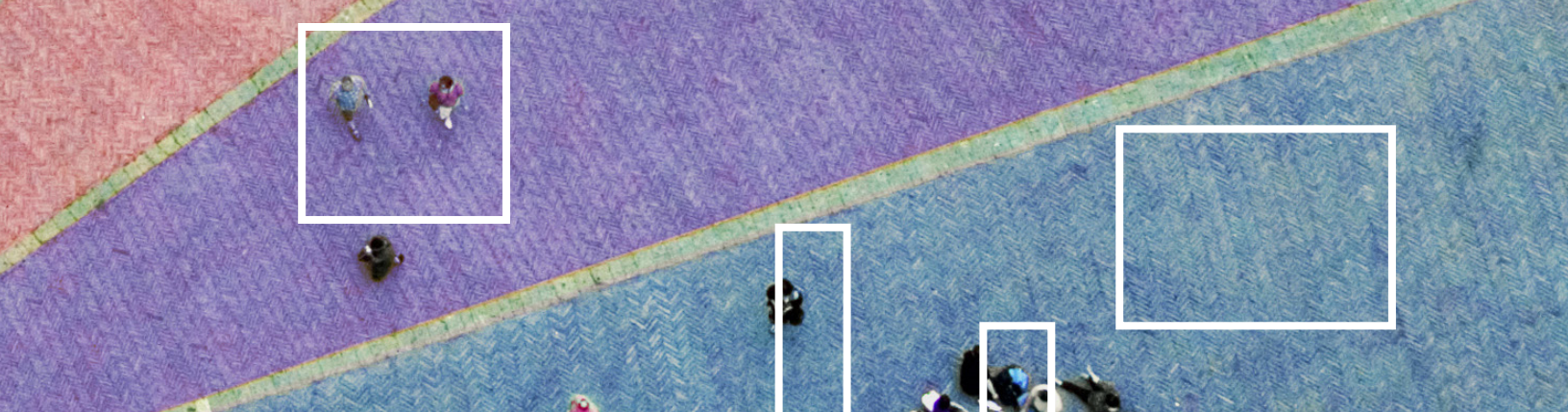
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Update on transgender sex discrimination

In the very first issue of *Public News and Views* in 2017, we shared the status of several lawsuits filed by LGBTQ students and employees based on Titles VII and IX of the Civil Rights Act and the U.S. Constitution's 14th Amendment. One of those cases has had a long and circuitous route through the federal courts, but because of a court of appeals decision handed down in late August 2020, it appears that its resolution may be near.

In the case of *Grimm v. Gloucester School Board*,¹ the 4th Circuit Court of Appeals relied partly on the recent U. S. Supreme Court decision in *Bostock v. Clayton County*² to hold that the school board's policies segregating transgender students from their peers are unconstitutional and violate federal laws prohibiting sex discrimination in education. The ruling effectively reverses the school's policies regarding use of bathrooms by transgender students and prohibiting use of a student's gender identity on his school transcript. According to the 4th Circuit, while Grimm's case was rooted in Title IX, the reasoning used by the Supreme Court in *Bostock* interpreting Title VII (workplace discrimination "on the basis of sex") would be the same.

The recent ruling follows a lower court decision in Grimm's favor last year, but both followed a U.S. Supreme Court decision first, to hear the case on its original appeal in 2017, followed by a later decision to send the case back to the 4th Circuit Court of Appeals for review in light of the current administration's rescission of President Obama's administrative guidance to schools on the subject of transgender student accommodations. The August 2020 decision by the 4th Circuit, followed by a denial of the school district's request for a full court rehearing of the case in late September, means that the matter may finally be on its way to a U.S. Supreme Court decision if the Court accepts a likely request to hear it.

With the *Bostock* precedent so recent, many observers believe the Court will be hard pressed to distinguish *Grimm* from that case even though different Titles of the Civil Rights Act are involved, as both use similar language in prohibiting sex discrimination. As the *Grimm* appeals court reasoned, citing *Bostock*, "[T]he Board could not exclude Grimm from the boys bathrooms without referencing his 'biological gender' under the policy, which it has defined as the sex marker on his birth certificate. Even if the Board's primary motivation in implementing or applying the policy was to exclude Grimm because he is transgender, his sex remains a but-for cause for the Board's actions. Therefore, the Board's policy excluded Grimm from the boys restrooms 'on the basis of sex.'"

We will be following this decision if the Supreme Court agrees to hear it on appeal from the 4th Circuit Court and report on the outcome. Meanwhile, schools should be careful in implementing policies on issues related to LGBTQ students in light of *Grimm* and *Bostock* to avoid potential liability under Title IX or the U.S. Constitution.

Source

¹ <https://www.ca4.uscourts.gov/opinions/191952.P.pdf>

² 140 S. Ct. 1731 (2020); <https://supreme.justia.com/cases/federal/us/590/17-1618/>.



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