DAC Bond

FSFOA – Fall Conference

Tax Exempt Bond Essentials

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Digital Assurance Certification

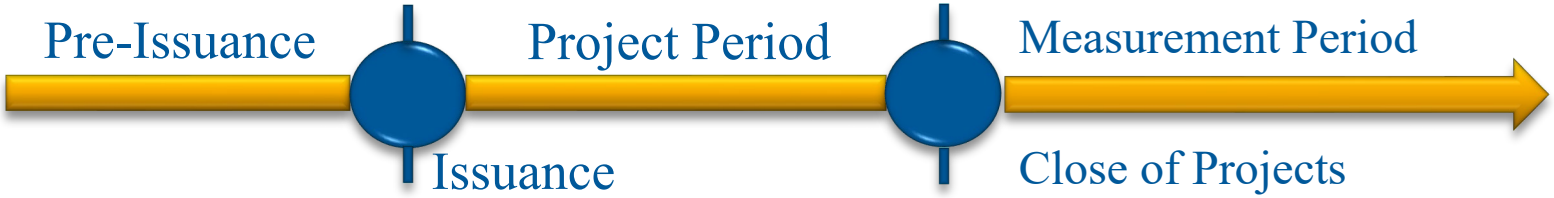
Learning Objectives

- Overview important documents and parties of a bond financing
- Discuss SEC and IRS requirements resulting from issuing tax-exempt debt.
- Discuss best practices pre & post issuance for maintaining compliance with the identified SEC and IRS requirements.
- Review and discuss which records your organization should maintain to ensure compliance.

Presentation Layout

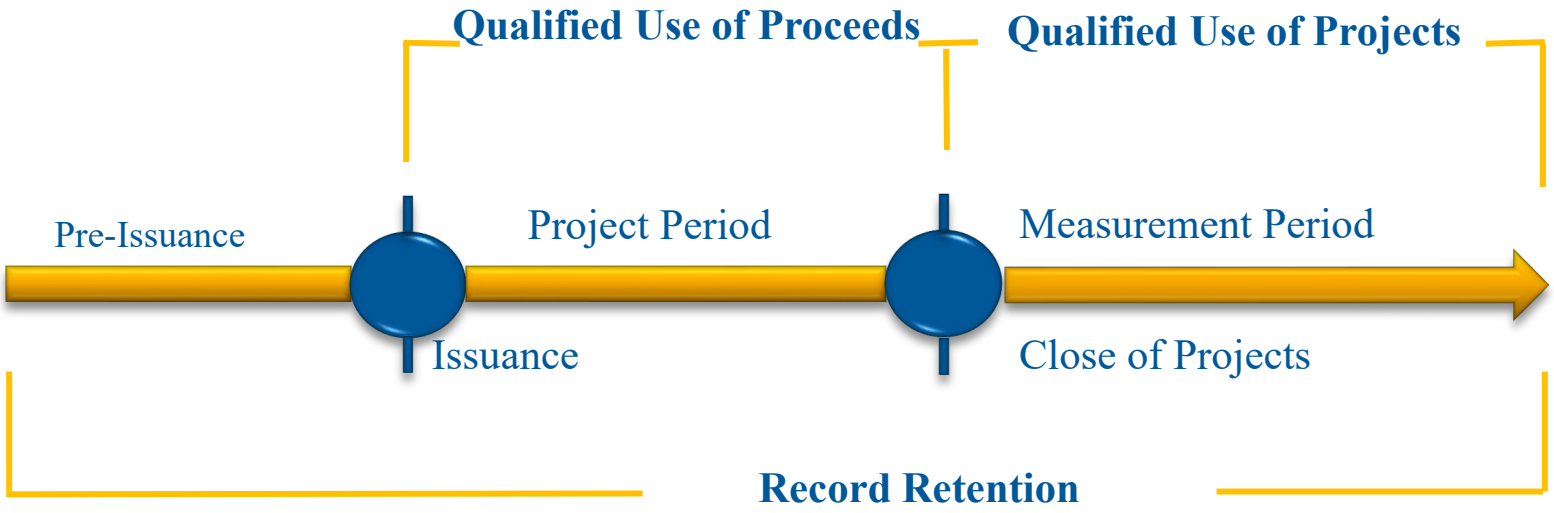
- We are going to review the essentials of tax exempt bonds across 5 separate stages of the life of the bond

1. Pre-Issuance
2. Issuance
3. Project Period
4. Close of the Project
5. Measurement Period



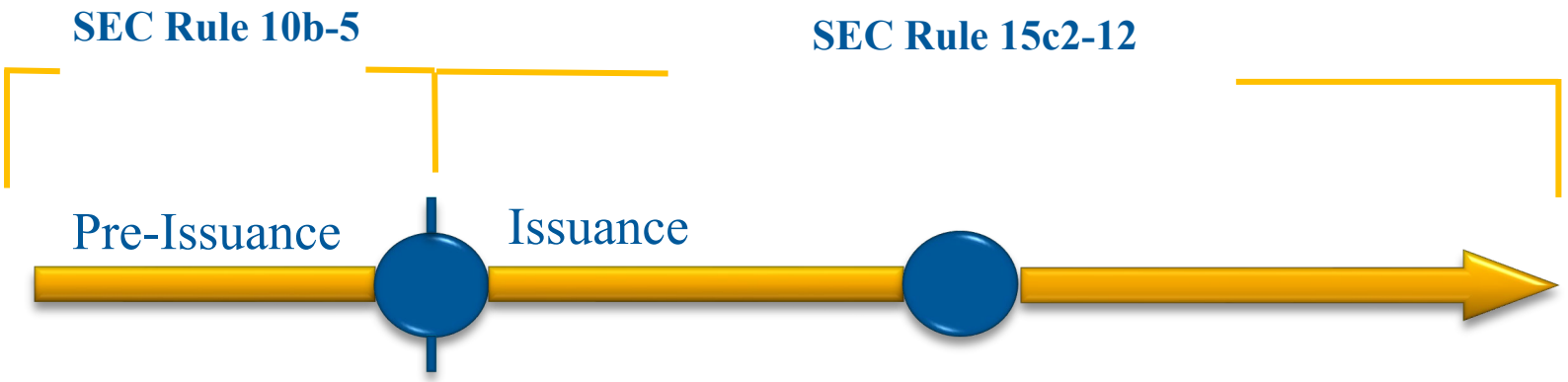
Federal Tax Requirements

- Post-issuance federal tax requirements can be broken down into 3 areas
  - Qualified Use of Proceeds
  - Qualified Use of Project
  - Record Retention

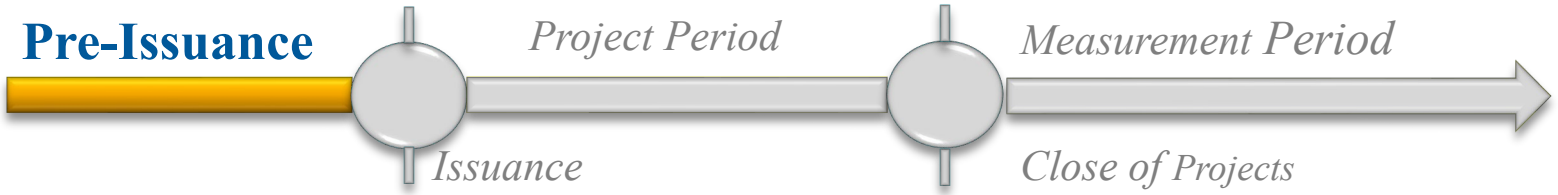


SEC Requirements

- Unlike tax requirements, no difference in the post issuance stages
- Like tax requirements, continue over the life of the bond



Stage 1: Pre-Issuance



- Focus is on **structure of financing**
- More **external parties** than other stages to help ensure proper diligence is completed
- Opportunity to establish guidelines, **policies and procedures**

Structure of the Financing

- **Types of Financing Arrangements**
  - Bonds
  - Notes
  - Lease Obligations
  - Certificates of Participation
- **Public Offering vs. Private Placement**
  - Public offering = underwriter makes bona fide offering of the bonds to public (excluding other underwriters, brokers, or placement agents)
  - Private Placement = usually bank, no intention to resell, has done its own diligence
- **Negotiated vs. Competitive Sale**
  - Negotiated: work with one underwriter/syndicate to sell bonds
  - Competitive: underwriters bid to purchase bonds through bidding process



Structure of the Financing continued

- **Interest Rates**
  - Fixed Rate
    - Typically serial (possibly term)
    - Typically semi-annual interest payments
    - Typically a 10 year call
  - Variable Rates
    - Typically Term
    - Multi-modal
    - Optional/Mandatory tender provisions
  - Zero coupon/capital appreciation
- **Redemption Features**
  - Optional redemption
  - Mandatory redemption
  - Extraordinary redemption



Parties of the Transaction

- **Underwriter**
  - Intermediary between the issuer and investors
  - Purchases the bonds from the issuer to sell the investing public
  - Typically an investment bank
  - Determines bond pricing/interest rate/maturities
- **Placement Agent**
  - Acts as an agent for the issuer to sell the bonds to an investor
  - Gets a fee to place the bonds
- **Financial Advisor**
  - Advises issuer/borrower with respect to bond transaction



Parties of the Transaction Continued

- **Trustee**
  - Charged with holding funds for bonds
  - Acts in a fiduciary capacity
  - Trustee may also be bond registrar and paying agent
- **Lawyers**
  - Bond Counsel
  - Underwriter's Counsel
  - Issuer's Counsel
  - Borrower Counsel
  - Disclosure Counsel
  - Trustee Counsel



Helpful Resources

- NABL's parties of a bond transaction
- MSRB's municipal bond basics

Pre-Issuance: Rule SEC Rule 10b-5

- **What is Rule 10b-5?**
  - Rule 10b-5 is a regulation created under the Securities and Exchange Act of 1934 that targets securities fraud. This rule makes it illegal for anybody to directly or indirectly use any measure to defraud, make false statements, omit relevant information, or otherwise conduct business operations that would deceive another person in the process of conducting transactions involving stock and other securities



Pre-Issuance: Record Retention

- Generally the documents you compile pre-issuance that are required to be maintained are included in the final closing documents
- Exceptions to include feasibility studies or other pre-construction research that relates to the bond financed property
- Supporting documentation relied upon from outside bond counsel opinion which should be maintained. (e.g. Project detail that formed basis of 120% calculation)

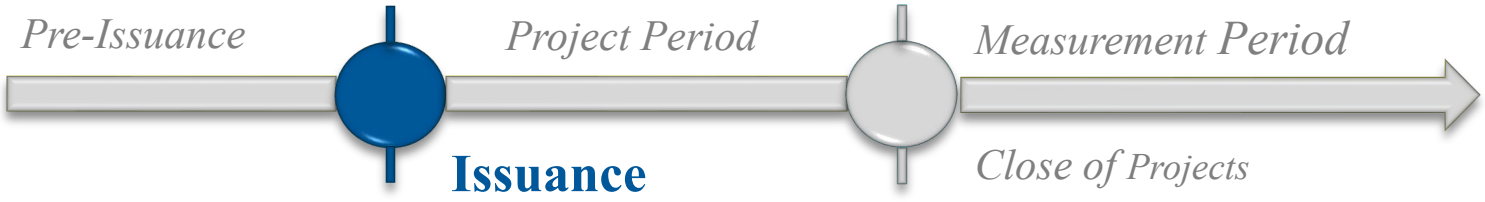


Pre-Issuance Best Practice: Policies and Procedures

- **Establish Policies and Procedures**
  - The pre-issuance time frame is optimal time to develop post-issuance compliance policies and procedures.
- **Are Policies and Procedures a requirement?**
  - No, there is no formal section of the IRS code that requires a written policy but form 8038-G, and all IRS questionnaires ask whether the organization has a policy and procedure in place.
- **What should my policies and procedures include?**
  - Due diligence review at regular intervals
  - Identifying the official or employee responsible for review
  - Training of the responsible official/employee
  - Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds)
  - Procedures reasonably expected to timely identify noncompliance; and
  - Procedures ensuring that the issuer will take steps to timely correct noncompliance.



Stage 2: Issuance



- Considered the beginning of the "post-issuance" timeline
- Time when responsibilities shift from the parties of the transaction to issuer/borrower
- Final Closing Transcript containing all the covenants of the bond issue
- Five closing documents we are going to discuss
  - Official Statement
  - Continuing Disclosure Agreement
  - Form 8038-G
  - Indenture / Loan Agreement
  - Tax Certificate / Non Arbitrage Certificate

Official Statement

- Used by underwriters to market and sell bonds to investors
- Like a prospectus in the corporate finance world
- SEC (Rule 15c2-12) has set forth rules as to what has to be included
- Information on the issuer/borrower/source of authority for issuance
- Sets forth the use of proceeds/security for bonds/source of repayment/description of bonds/bond features
- Financial information of issuer/borrower



Continuing Disclosure Agreement

- Most important document for SEC continuing disclosure compliance
- Identifies EMMA filing due dates
- Identifies the content makeup of annual reports (what operating data is required to be submitted + annual financial statements
- Enumerates the **material event** notices required to be submitted with EMMA



Contents of Annual Reports

SECTION 3. Content of Annual Reports.

(a) Each Annual Report shall contain Annual Financial Information with respect to the School Board, including, to the extent not set forth in the Audited Financial Statements:

1. Updates of information in the Offering Statement relating to:

a. Revenue sources as described under the headings "OPERATING REVENUES OF THE DISTRICT", and "AVAILABLE REVENUES FOR CAPITAL OUTLAY PROJECTS" and the table entitled, "Anticipated Local Option Millage Levy Required to Cover Basic Rent Payments Represented by the Outstanding Certificates and the Series 2023A Certificates;"

b. The tables entitled "Assessed Value of Taxable Property," "District Millage Rates," "Property Tax Levies and Collections" and "Principal Property Tax Payers" under the heading "AD VALOREM TAXATION";

c. The tables entitled "Summary of Revenues and Expenditures – General Fund" and "Summary of Capital Projects Fund Revenue and Expenditures" under the heading "FINANCIAL RESULTS AND LIABILITIES OF THE DISTRICT."

Material Events

1. Principal and interest payment delinquencies
2. Non-payment related defaults, if material
3. Unscheduled draws on debt service reserves
4. Unscheduled draws on credit enhancements
5. Substitution of credit or liquidity providers
6. Adverse tax opinions
7. Modifications to rights of security holders, if material
8. Bond Calls, if material
9. Defeasances
10. Release, substitution, or sale of property securing repayment of the securities
11. Rating changes



Material Events Continued

12. Bankruptcy, insolvency, receivership or similar event
13. Consummation of merger, acquisition, or sale of substantially of all the assets of obligated party
14. Appointment of a successor or additional trustee
15. Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties

15 & 16 – CDA's after February 27, 2019



FDTA & Continuing Disclosure

- **What is the FDTA?** The Federal Data Transparency Act (FDTA) was signed into law on December 23,2022 and directs certain regulatory agencies (including the SEC) to jointly issue proposed rules that establish new data reporting standards on format, searchability, and transparency.

- **How does the FDTA impact munis?** The SEC is required under the act to data standards for information submitted to the Municipal Securities Rulemaking Board (MSRB).

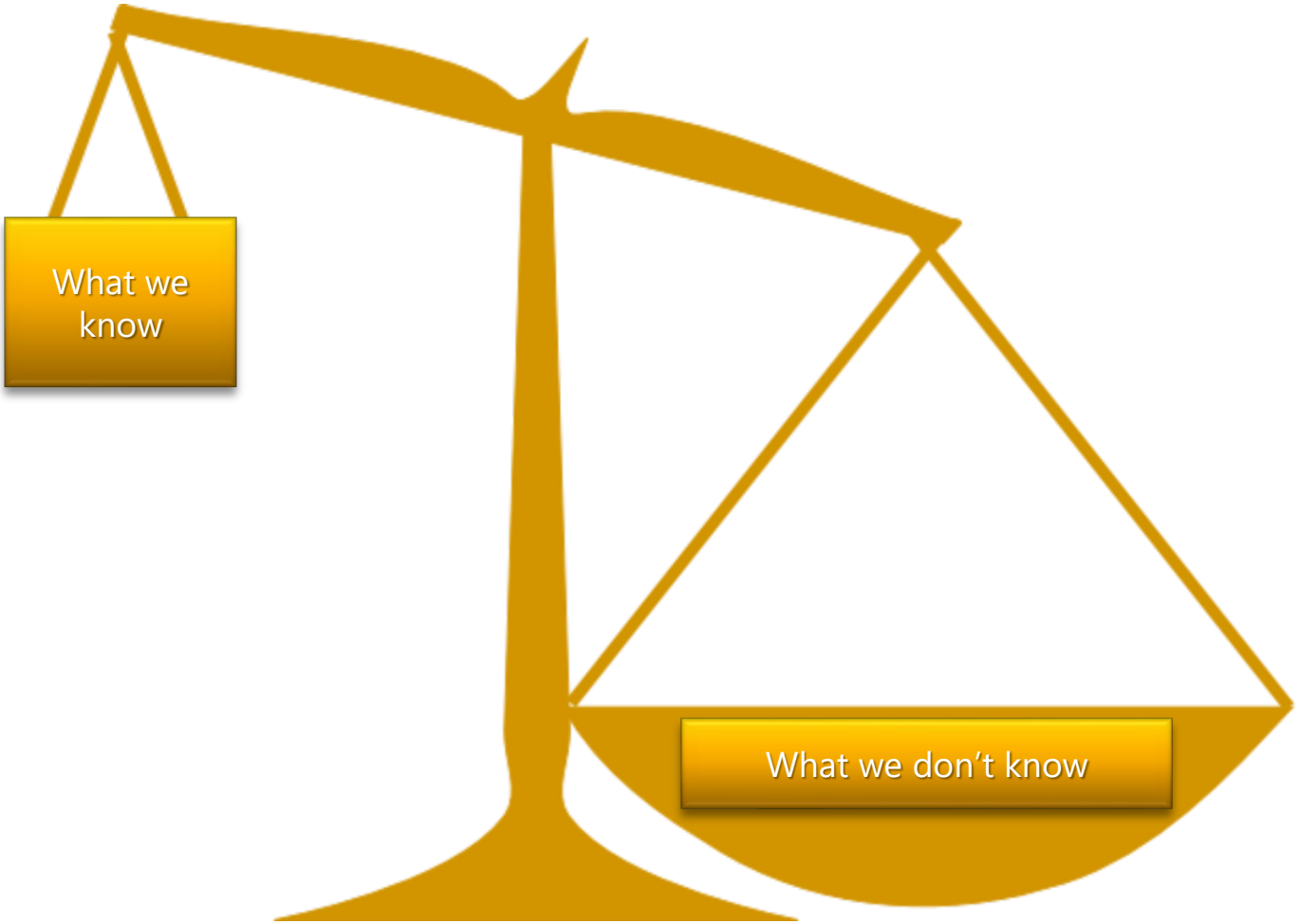
FDTA: What to Know

- The FDTA does not incorporate any new reporting standards.
- The FDTA will not change what you are reporting to the MSRB, but how you report it.
- The FDTA will introduce the concept of data standards and machine readable data to the municipal market
- There is a difference in the Joint Data Standards and the Municipal Market Data Standards

FDTA Timeline

- **December 2022** – FDTA signed into law
- **June 2023** – SEC reports to Congress on the costs and benefits of structured data in corporate disclosures.**Completed every 6 months*
- **Sept. 2024** – Regulators publish proposed rules for comment to establish "Joint Data Standards"
- **Dec. 2024**– Regulators issue final Joint Rulemaking and officially adopt Joint Data Standards.
- **2025 –** SEC develops Municipal Market Data Standards in line with the Joint Data Standards and specific to municipal market.
- **Mid-2026–** SEC published proposed Municipal Market Data Standards: MSRB likely introduces reporting method changes in line with proposed rules.
- **Dec. 2026 –** Joint Standards become effective, SEC issues final rule adopting Municipal Market Standards.
- **2027 & Beyond–** New Municipal Market Standards and associated MSRB rule changes become effective

FDTA & Municipal Market



FDTA & Municipal Market

FDTA will apply to "information submitted to" the MSRB.

Rule	Information Submitted	Submission Platform	Submitter
MSRB Rule A-12	Registration/Contact Information (Form A-12)	MSRB Gateway	Broker-dealers; municipal advisors
MSRB Rule G-15	Trade Reports	DTTC Interactive Messagings & Real-Time Trade Matching System; MSRB RTRS Web	Broker-dealers
MSRB Rule G-32	Primary Offering Disclosure (Form G-32)	EMMA / DTCC	Broker-dealers
MSRB Rule G-34	Variable Rate Security Market Information	EMMA / SHORT System	Broker dealers
MSRB Rule G-37	Political Contributions (Form G-37)	EMMA	Broker-dealers; municipal advisors
MSRB Rule G-45	Information on Municipal Fund Securities (Form G-45)	EMMA	Broker Dealers
SEC Rule 15c2-12	Municipal Securities Disclosure	EMMA	Municipal issuers; obligated persons

MSRB may scale data reporting requirements in order to reduce any unjustified burden on smaller regulated entities.

FDTA Common Questions

- A third party company told me that we have to begin conversion of our data to machine readable format now, is that true?
- We were told that all financial reports and events will be required to be in machine readable format, is that true?
- What is meant by machine readable data and where can I see an example?

Resources

- FDTA (Link to Act)
- SEC Reports to Congress on Use of Machine-Readable Data for Corporate Disclosures
  - June 2023 Report
  - Dec. 2024 Report
- Comment Page for Joint Rule Proposal
- Structured Data is Coming to the Municipal Securities Market – Now What?
- State of Michigan – XBRL Feasibility Study

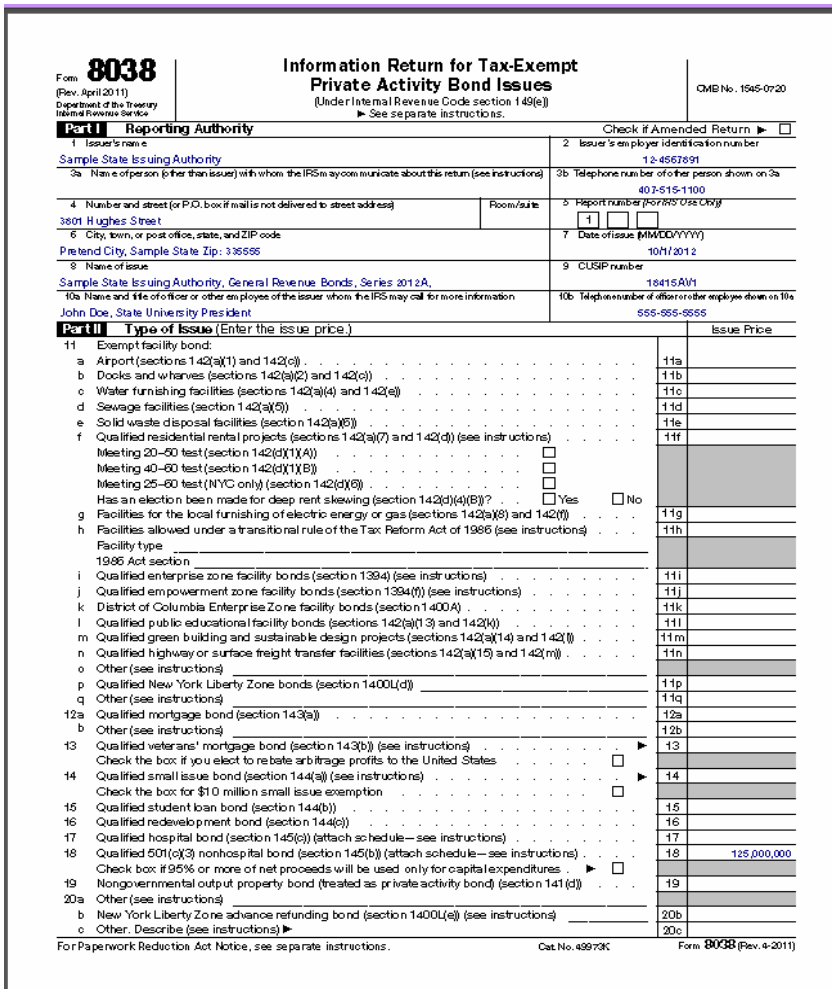
What do we need to do?

- Don’t be sold on any overhaul of your financial systems or processes.
- Pay attention to the development of the rulemaking process.
- Be prepared to comment when the Municipal Market Data Standards come out (2026)


AND NOW BACK TO
OUR REGULARLY
SCHEDULED
PROGRAMMING

Form 8038/G

- Form detailing out general issuance information, which is completed by bond counsel and mailed to IRS
- Provides Bond Type, Use of Proceed Overview, and whether GICs or Swaps were entered for the issue
- Starting Point when compiling your own bond issue list for tracking purposes



Form **8038** (Rev. April 2011)
Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Private Activity Bond Issues
(Under Internal Revenue Code section 149(e))
▶ See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority — Check if Amended Return ▶ ☐

1 Issuer's name: Sample State Issuing Authority	2 Issuer's employer identification number: 12-4567891
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)	3b Telephone number of other person shown on 3a: 407-515-1100
4 Number and street (or P.O. box if mail is not delivered to street address): 3801 Hughes Street; Room/suite	5 Report number (*FOR IRS USE ONLY*): 1
6 City, town, or post office, state, and ZIP code: Pretend City, Sample State Zip: 336555	7 Date of issue (MM/DD/YYYY): 10/1/2012
8 Name of issue: Sample State Issuing Authority, General Revenue Bonds, Series 2012A,	9 CUSIP number: 18415AW1
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information: John Doe, State University President	10b Telephone number of officer or other employee shown on 10a: 555-555-5555

Part II Type of Issue (Enter the issue price.)

			Issue Price
11	Exempt facility bond:		
a	Airport (sections 142(a)(1) and 142(c))	11a	
b	Docks and wharves (sections 142(a)(2) and 142(c))	11b	
c	Water furnishing facilities (sections 142(a)(4) and 142(e))	11c	
d	Sewage facilities (section 142(a)(5))	11d	
e	Solid waste disposal facilities (section 142(a)(6))	11e	
f	Qualified residential rental projects (sections 142(a)(7) and 142(d)) (see instructions)	11f	
	Meeting 20–50 test (section 142(d)(1)(A)) ☐		
	Meeting 40–60 test (section 142(d)(1)(B)) ☐		
	Meeting 25–60 test (NYC only) (section 142(d)(6)) ☐		
	Has an election been made for deep rent skewing (section 142(d)(4)(B))? ☐ Yes ☐ No		
g	Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g	
h	Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h	
	Facility type		
	1986 Act section		
i	Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i	
j	Qualified empowerment zone facility bonds (section 1394(f)) (see instructions)	11j	
k	District of Columbia Enterprise Zone facility bonds (section 1400A)	11k	
l	Qualified public educational facility bonds (sections 142(a)(13) and 142(k))	11l	
m	Qualified green building and sustainable design projects (sections 142(a)(14) and 142(l))	11m	
n	Qualified highway or surface freight transfer facilities (sections 142(a)(15) and 142(m))	11n	
o	Other (see instructions)		
p	Qualified New York Liberty Zone bonds (section 1400L(d))	11p	
q	Other (see instructions)	11q	
12a	Qualified mortgage bond (section 143(a))	12a	
b	Other (see instructions)	12b	
13	Qualified veterans' mortgage bond (section 143(b)) (see instructions) ▶	13	
	Check the box if you elect to rebate arbitrage profits to the United States ☐		
14	Qualified small issue bond (section 144(a)) (see instructions) ▶	14	
	Check the box for $10 million small issue exemption ☐		
15	Qualified student loan bond (section 144(b))	15	
16	Qualified redevelopment bond (section 144(c))	16	
17	Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17	
18	Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18	125,000,000
	Check box if 95% or more of net proceeds will be used only for capital expenditures ▶ ☐		
19	Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19	
20a	Other (see instructions)		
b	New York Liberty Zone advance refunding bond (section 1400L(e)) (see instructions)	20b	
c	Other. Describe (see instructions) ▶	20c	

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 49973K Form **8038** (Rev. 4-2011)

Issuance

Form 8038-G continued

- Part IV Breakout of the different uses of the bond proceeds

Part IV	Uses of Proceeds of Issue (including underwriters' discount)				Amount
22	Proceeds used for accrued interest			22	
23	Issue price of entire issue (enter amount from line 21, column (b))			23	126,805,102
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	2,536,102		
25	Proceeds used for credit enhancement	25	125,000		
26	Proceeds allocated to reasonably required reserve or replacement fund	26	3,000,000		
27	Proceeds used to currently refund prior issue (complete Part VI)	27	33,844,000		
28	Proceeds used to advance refund prior issue (complete Part VI)	28			
29	Add lines 24 through 28			29	36,805,102
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	90,000,000

- For issues with refunding proceeds Part VI provides the issue dates of the bonds being refunded.

Part VI	Description of Refunded Bonds (Complete this part only for refunding bonds.)		
33	Enter the remaining weighted average maturity of the bonds to be currently refunded ▶	20.336	years
34	Enter the remaining weighted average maturity of the bonds to be advance refunded ▶	NA	years
35	Enter the last date on which the refunded bonds will be called ▶	10 / 15 / 2012	
36	Enter the date(s) the refunded bonds were issued ▶ 5/9/2007, 10/25/2005		

- You also may have already promised you have policies and procedures.

43 Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements under the Code and Regulations (see instructions) ▶ ☑

44 Check the box if the issuer has established written procedures to monitor the requirements of section 148 ▶ ☑



Indenture & Loan Agreement

- **Indenture**
  - Terms between issuer and the trustee, for the benefit of the bondholders
  - Outlines the funds and the accounts associated with the issue
  - Outlines the format/process for requesting requisitions
  - States how proceeds will be invested and the restrictions on investments
  - Sets forth the terms of the bonds (maturities/interest rate/redemption features)
  - Representations/covenants/warranties/defaults/remedies

- **Loan Agreement**
  - Between issuer and borrower
  - Indemnifies Issuer
  - Terms and conditions of the loan
  - Repayment terms



Tax Certificate

- **For Tax compliance - Most important and most referenced document**

- **Outlines all post-issuance requirements**
  - Requirements for use of proceeds
  - Requirements for disbursement of construction proceeds
  - Record retention requirements
  - Private use restrictions
  - Due dates for arbitrage rebate

- **Special Allocations**
  - Combined measurement period treatment
  - Combined Issue treatment
  - Multi-purpose allocations

- **Pre-issuance discoveries**
  - Remedial actions taken leading up to issuance



Issuance: Best Practices

- Review the closing documents
  - Official Statement
  - 8038/G – Bond basics and great place to start with issue list database
  - Indenture/Loan Agreement – identify where the proceeds are held and spending requirements
  - Continuing Disclosure – what needs to be filed with EMMA and when
  - Tax Certificate – all the requirements and special allocations for the issue
- Based on the information in closing documents
  - You are able to create compliance checklist
  - Update your policy and procedures document originally created during pre-issuance



Issuance: Record Retention

- We covered only a few of the documents contained in the final transcript, but you should maintain the entire transcript over the life of the bond plus three years

- If the issue is a refunding issue, the previous issue's final transcript should be maintained over that same period

- Closing of the bond transaction marks a good time to establish a process for maintaining all records



Stage 3: Project Period



- Period of time from receiving the proceeds until the projects are placed in service
- Typically must conclude within 5 years of issuance, but is based on a reasonable expectation so a change in circumstance could permit a longer period
- Any divergence from the original financing plan should be addressed during this time
- Period where violations regarding proper use of proceeds are most likely to occur

Project Period: Use of Proceeds Requirements

- **Spend in accordance with original purpose**
  - Tax Certificate / Official Statement
- **Stay within limits provided**
  - Working capital restrictions
  - Reimbursement restrictions
- **Don’t make it faster than you spend it**
  - Arbitrage / Yield Restrictions and Spending Exceptions



Reimbursement Rules

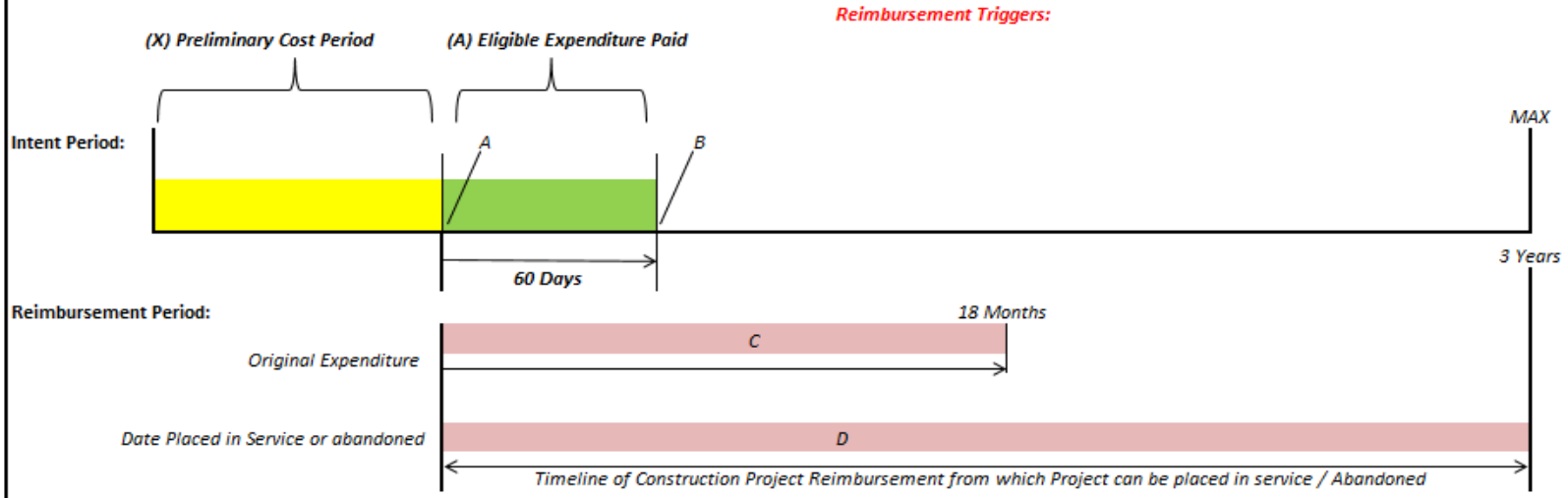
- IRS Reg. Section: 1.150-2
- Overview: Permits the reimbursement of expenditures made prior to closing of the bonds to be reimbursed with bond proceeds after issuance
- Rule: Qualified Reimbursement if:
  - Official Intent Adopted– Not later than 60 days after payment of the original expenditure
  - Reimbursement is made not later than 18 months after the later of:
    - The date original expenditure is paid
    - The date the project is placed in service or abandoned, but no later than 3 years after the original expenditure is made
  - Acceptable Nature of expenditure
    - Capital Expenditure
    - Cost of Issuance
    - Grants, Qualified Student Loans, Qualified Mortgage Loans, & Qualified Veterans Loans
    - Extraordinary Working Capital (described in 1.148-6(d)(3)(ii)(B)



Reimbursement Rules Continued

General Operating Rules for Reimbursement of Original Expenditures - Treas. Reg. 1.150-2(d) -

¶ 1 Official Intent
¶ 2 Reimbursement Period
¶ 3 Nature of Expenditure



NOTE: *Maximum period for Reimbursement Allocation made = +18 months after* ***the later of A*** *or D, whichever is later, but not > 3 Yrs.*

X	*Preliminary Expenses include: (e.g. Architectural, Engineering, Soil Testing, etc.) No time limits on these costs (Cannot exceed 20% of the Aggregate Issue Price)*
A	*Begin Date to capture construction costs allowed for 60 days of Original Expenditures"* ***Paid***
B	*Last date, within the "60-day window" to execute/prepare "Official Declaration of Intent" - 1.150-2(d)(1) (Must have reasonable expectation to reimburse and include a Project Description; Maximum $$ value of Bond)*
C	*Reimbursement is allowed within 18 months of* ***original expenditure paid***
D	*Reimbursement is allowed within 18 months of* ***Date placed in service or abandoned***



Arbitrage Rebate

- The project period is when arbitrage rebate and yield restriction violations could occur
- What is Arbitrage?
  - An Arbitrage Bond occurs when the yield on the investment of the bond proceeds is materially higher than the yield on the bonds
    - **What is considered materially higher?**
    - **Unrestricted Yield Periods**
  - Even if materially higher, spending exceptions may apply
    - **2 year & 18 month spending exception**
    - 6 month spending exception
    - Small issuer exception
- Common Pitfall
  - Issuers/Borrowers get focused on meeting the spending exception deadlines when it is clear the yield on their investments are significantly lower than the yield on the bonds.



Arbitrage: Materially Higher

- The yield on investments is materially higher than the yield on the bond issue if the yield on the investments over the term of the issue exceeds the yield on the issue by an amount greater than the following:
  - General rule: 0.125%
  - Refunding escrows and replacement proceeds: .001%
  - Program investments: 1.5%
  - Student loans: 2.0%
  - Tax-Exempt Investments: for tax-exempt bonds that are not investment property, no yield limitation applies



Arbitrage: Unrestricted Yield Periods

- The Code and Regulations permit issuers to, notwithstanding the yield restriction limitation previously mentioned, invest certain categories of bond proceeds at an unrestricted yield for a period of time, i.e., a "temporary period." Common temporary periods:
  - Capital projects and mortgage loans: 3 years from the date of issue (can be extended to 5 years)
  - Working capital expenditures: 13 months
  - Replacement proceeds: 30 days
  - Bona fide debt service fund: 13 months
  - Investment proceeds: 1 year
  - Current refundings: 90 days



Arbitrage: 2 year & 18 month spending exceptions

2 Year Spending exception

- Applies to construction issues financing improvements owned by a governmental unit or a 501(c)3 organization. It does not apply to refundings.
- 10% within 6 months of the date of issue:
- 45% within 12 months
- 75% within 18 months
- 100% within 24 months

18 Month Spending exception

- Applies to all "new money" financings, but not refundings.
- 15% within 6 months of the date of issue
- 60% within 12 months
- 100% within 18 months



Project Period: Best Practices

- **Focus on the spending of the proceeds**
  - Identify spending benchmarks if applicable
  - Monitor the amount of proceeds spent on non-capital projects
  - Detailed tracking of project spending, with next stage in mind
- **Focus on the investment of proceeds**
  - Identify whether the spending exceptions are needed
  - Identify who will be performing Arbitrage rebate calculation and when
- **If changes occur, ensure substitutions are within requirements**



Project Period: Record Retention

- **Documentation evidencing expenditure of proceeds**
  - Trustee/Bank Statements
  - Requisition Request
  - Invoices
  - Draw Detail that ties to projects
  - If applicable, project substitution documentation
- **Documentation evidencing investment of proceeds**
  - Purchase and sale of securities, SLG subscriptions
  - Yield calculations
  - Actual investment income received
  - Rebate Calculations



Stage 4: Close of Projects



- Also thought as "Final Allocation". Permitted to reallocate 18 months after the placed in service date of the project, but no later than 5 years from issuance
- Marks the transition of Use of Proceeds focus to Use of Financed Property
- Arbitrage Rebate completion



Close of Projects: Best Practices

- Summarize draw level detail in manageable project level form
- Gather building information that may serve as basis for pbu measurement; example: total square feet of project
- Have documented process of allocating non-exempt funds to projects
- Document and maintain account closing dates and any transfer to non-capital project uses



Close of Projects: Record Retention

- **Bond Financed Project List**
  - Final Allocation of Tax Exempt & Non Exempt Proceeds
  - Brief Description of Project
  - Placed in Service Date
  - Useful Life
- **Arbitrage Rebate Reports**



Stage 5: Measurement Period



- Stage most of your outstanding bond issues are in right now
- Goes for the remaining life of the bond
- Focus shifts from the proper use of proceeds to the proper use of projects (Private Business Use)

Proper Use of Financed Property

- Proper Use of Property = Staying within Private Business Use limits
- Private Business Use means use (directly or indirectly) in a trade or business carried on by any person other than the governmental unit
- Rule: An issue meets the private business use test if more than 10% of the proceeds of the bond issue are to be used for private business use.
- There are actually two portions to the test
  - Private Business Use Portion
  - Private Payment & Security Portion



Private Business Use: Govt. vs. 501(c)3

Rule/Category	Governmental	501(c)3
Overall Limitation	10 %	5 %
Cost of Issuance	Does not count as PBU	Counts as PBU
Unrelated Activity	Does not count as PBU	Counts as PBU
Form 990, Schedule K	No Requirements to file	Required to File Annually
Use by 501(c)3	Counts as PBU	Doesn't count unless unrelated



Examples of Private Business Use

- Actual and Beneficial Use by a nongovernmental person
- Ownership by a nongovernmental person
- Leases
- Management Contracts
- Output Contracts
- Research Agreements



Measurement Period: Best Practice

- Establish a process for verifying the use of bond financed property.
- Educate team members on the importance of the disposal/sale of bond financed property.
- Perform self assessments based on IRS publications, can we answer the questions that are provided in an IRS examination?



Measurement Period: Record Retention

- Documentation of use of bond financed property
  - Annual PBU calculations
  - Third party contracts
  - Annual Questionnaires
  - PBU determinations by external parties
  - If applicable, evidence of sale of financed property
  - If applicable, remediation documentation



Why is this important?

- As part of the Inflation Reduction Act, the IRS received an influx of resources to hire additional agents.
- An additional 120 positions has led to an increase in IRS audits.
- IRS publicly stated that the audits will continue to increase over the upcoming fiscal years. (10/1 – 9/30)

Helpful Resources

- Internal Revenue Manual – the procedures, including questions asked, in an IRS examination
- NABL's Bond Basics – terms, definitions, important rules, and general information about post issuance compliance