

ICCCFO Spring Conference

Federal and State Legal Considerations for Community College Finance

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What are municipal bonds?

- A debt security issued by a Community College District to finance its capital expenditures or operations or for other authorized purposes
- Bonds must be issued within the District's debt limit, which is equal to 2.875% of the District's EAV
 - Certain exceptions (alternate bonds, warrants, working cash fund bonds, funding bonds)

For what Purposes Can Community College Bonds be Issued?

- Capital Projects
 - Purchase and build new buildings, renovate, improve and equip existing buildings, purchase equipment
- Operating Expenses
- Refunding
 - For savings
 - To restructure debt

How Can the Community College Borrow Money?

Long-Term Borrowing Options

- Building Bonds
- Working Cash Fund Bonds
- Funding Bonds
- Protection, Health and Safety Bonds
- Installment Contract and Lease/Debt Certificates
- Alternate Bonds
- Refunding Bonds

What If We Only Need Money Short-Term?

Short-Term Borrowing Options

- Tax Anticipation Warrants
- Working Cash Fund Bonds

Applicable Laws

- State law
 - Public Community College Act of the State of Illinois, as amended
 - Property Tax Extension Limitation Law
 - Local Government Debt Reform Act
 - Open Meetings Act
 - Bond Issue Notification Act
- Federal tax law – Internal Revenue Code and Regulations
 - Expenditure of Proceeds
 - Arbitrage
 - Private Use
- Securities Law
 - Anti-fraud provisions
 - Continuing Disclosure

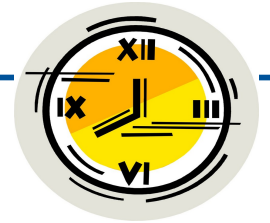
Open Meetings Act — Types of Meetings

- Regular Meetings
 - Determined at the beginning of the calendar or fiscal year
 - Additional notice required for a change in the regular meeting schedule
- Special Meetings
 - Called by the Chairperson or by three members of the Board of Trustees
 - Notice must be given to the Board of Trustees members and any news media that have requested such notice
 - Cannot be held on a legal holiday

Open Meetings Act — Types of Meetings (cont'd.)

- Rescheduled Regular Meetings
 - Called by the Board of Trustees at a regular meeting
 - Notice must be given to the Board of Trustees members and any news media that have requested such notice
 - Cannot be held on a legal holiday
- Committee of the Whole
 - Is NOT a Board of Trustees meeting
 - If action is to be taken by the Board of Trustees, it must be noticed as special meeting

Open Meetings Act — Agenda



- Illinois Open Meetings Act Section 2.02
- Must include the general subject matter of any resolution that will be the subject of final action
- 48-hour posting requirement
 - At the principal office of the Board of Trustees and at the meeting location
 - Not on a Saturday, Sunday or legal holiday
- Must be continuously available for public review during the entire 48-hour period preceding the meeting (posting on the District's website satisfies this requirement)

Open Meetings Act: Takeaways

- Bond Counsel will provide agenda language for bond-related items to be considered by the Board of Trustees
- Agenda item to include par amount, purpose of bond issue, security, authorization of purchaser
- Best practice is to use exact language provided by Bond Counsel and ask for clarification if you have any questions
- Stay on top of agenda deadlines and changes to regular meeting schedule
- Call bond counsel with any questions

Bond Issue Notification Act (BINA) Hearing

- Applicable to non-referendum bonds and alternate bonds other than refundings
- Hearing can be called by the Chairperson alone or by resolution of the Board of Trustees
- Notice of hearing published in a local newspaper 7-30 days before hearing
- Notice of hearing posted 48 hours before hearing
 - Must be continuously available for public review during the entire 48-hour period preceding the meeting
 - Posting on the District's website satisfies this requirement
- Hearing held at least 7 days before bond sale
- Advisory only

Funding Bonds and Alternate Bonds require a Petition Period

- Sometimes called a “Backdoor Referendum”
- Adopt a resolution setting forth the District’s intent to issue working cash fund bonds, funding bonds or alternate bonds
- Publish the notice of intent to issue the bonds in a newspaper of general circulation within the District
 - Publication commences the “Petition Period”
 - 30 day period during which a petition containing the requisite number of voter signatures may be submitted to the Secretary of the Board to request a referendum on issuing the bonds
- Secretary is required to provide a petition form to anyone requesting one.
- If a petition is signed by the requisite number of voters, the District may challenge the petition, opt not to proceed with the issuance or proceed to referendum
- If no petition is filed, or there are not enough valid signatures, the District can proceed with the issuance of the bonds (after BINA hearing)

Tax Exemption

- Interest on obligations validly issued by unit of local government is presumed to be tax-exempt
- Must demonstrate need (to prevent abuses)
- Capital Projects
- Working Capital
- Refundings – within 90 days in advance of call date

3-Year Temporary Period — Capital Projects Only

- Reasonable Expectations
- Sale and investment proceeds
- Three Tests:
 - *Expenditure Test—85% within 3 years*
 - *Time Test—5% within 6 months*
 - *Due Diligence Test*
- Certification Required
- No protection for intentional acts or bad faith

Investment of Bond Proceeds – Arbitrage Rebate Rules

- Arbitrage: Difference between (i) what would have been earned if tax-exempt bond proceeds were invested at bond yield and (ii) the earnings on the investment of such tax-exempt bond proceeds in higher yielding securities
- Rebate: District must pay (or rebate) arbitrage profits to federal government
- Anything above bond yield gets paid to the US Treasury, unless you meet one or more exceptions:
 - Small issuer exception
 - Spend-down exceptions

Economic Life – Capital Projects

- Weighted average maturity of the bonds cannot exceed 120% of the reasonably expected economic life of the projects financed
- Applies to refundings

Use of Bond Proceeds – Private Activity

- Tax exemption does not apply to any “private activity bond”, with limited exceptions
- Private Activity Bond
 - Any bond that meets (i) the “private business use test” AND (ii) the “private payment or security test”



Use of Bond Proceeds – Private Activity (cont'd.)

- “Private business use”
 - More than 5% of bond proceeds finance a public facility used by a non-governmental trade or business
 - Examples of private use:
 - Sale, transfer or lease of property to private user (including a non-profit organization)
 - Management of property by private user under a management contract
- “Private payment or security”
 - More than 5% of debt service on the bonds is secured by an interest or derived from payments related to private use
 - Example of private payment:
 - Payments of lease rentals to the District by a private operator (including a non-profit organization)

Post Issuance Compliance Policy

1) Designation of Compliance Officer

- Assign responsibility for monitoring and filings
- Internal reporting of compliance efforts

2) Record Retention:

- Basic records relating to the bond transaction (transcript)
- Records to demonstrate tax compliance
 - Investment of bond proceeds
 - Expenditure of proceeds
 - Use of bond-financed property by public and private sources
 - Leases and management contracts
 - Generally, material records should be kept as long as the bonds remain outstanding, plus 3 years after the final redemption date

Post Issuance Compliance Policy

(cont'd.)

3) Due diligence at regular intervals

- Principal and interest payment dates are good benchmarks
- Annual report to Board of Trustees

4) Procedures reasonably expected to timely identify and timely correct noncompliance

- Integrate monitoring of tax law compliance with existing accounting systems (for example, use special coding on a ledger to review sales, leases or contracts involving bond financed property)
- Use of compliance checklist throughout the lifetime of the financing

Official Statement Disclosure—Overview

- The official statement is a document prepared by, or on behalf of, the District in connection with a primary offering of its bonds
- The official statement should disclose all material information on the bond offering for potential investors
- The official statement is the main source of anti-fraud liability in a municipal transaction

SEC Rules

- Anti-Fraud Provisions
 - '34 Act – Section 10 & Rule 10b-5; '33 Act - Section 17(a)
 - Prohibits fraud in the offer or sale of securities
 - Unlawful to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading
- SEC Rule 15c2-12
 - Requires underwriters of municipal securities to:
 - Obtain, review and disseminate an official statement
 - Ensure that District has undertaken (contracted) to provide certain continuing disclosures to the market (Continuing Disclosure Undertaking or CDU) and is reasonably expected to comply

Obligation of the District

- The Official Statement is the District's document
- The obligation for the accuracy and completeness of the disclosure lies with the District
 - Experts can help, but cannot completely discharge, the District's obligation
 - District, Underwriter, Financial Advisor, Attorneys all have potential anti-fraud liability for material misstatements or omissions in Official Statements

Due Diligence Calls

- Process:
 - District is provided a copy of the Preliminary Official Statement in advance of the call for review
 - Underwriter/FA, Counsel and the District on the Call
 - Review / acknowledge completed Due Diligence Questionnaire
- Questions regarding:
 - Accuracy of POS
 - Changes in financial affairs since Financial Statements
 - Audits, investigations, litigation
 - Employees and employee relations
 - Major taxpayer status
 - District should raise “material” issues not covered by questions

Official Statement Disclosure — Takeaways

- Review your official statement and don't just assume that is the job of your professionals – it is your document!
- Think about what you would want to know about your District if you were buying the District's bonds and make sure that is in the official statement
- Disclosure should not be a routine procedure of only inserting new numbers in the last official statement
- Possibility of individual liability for involvement in fraud

Official Statement Disclosure — Takeaways

- Districts should adopt, and follow, policies and procedures for updating and reviewing disclosures/official statements
- Such policies and procedures:
 - May involve formalization of existing procedures (e.g., hiring disclosure counsel or other municipal finance professionals to assist with disclosure)
 - Should set forth responsibilities of staff (and perhaps) governing board with respect to disclosure
 - Delegation of responsibility to staff and/or outside professionals must be reasonable

Continuing Disclosure—Overview

SEC Rule 15c2-12

- Prohibits an underwriter from underwriting bonds unless the District has agreed to provide certain information and event disclosures to the market pursuant to a Continuing Disclosure Undertaking (CDU)
- CDU filings must be made on EMMA (Electronic Municipal Market Access) portal
- Bondholders may sue for specific performance
- District must disclose CDU non-compliance in official statements (five year look back)

Continuing Disclosure—Rules

- If new issue is less than \$1,000,000: No CDU
- If new issue is sold directly to a bank: No CDU (generally)
- If new issue is at least \$1,000,000 and District has over \$10,000,000 of debt, District must agree to provide:
 - Annual financial information
 - Audited financial statements
 - Reportable events
- If new issue is at least \$1,000,000 and District has less than \$10,000,000 of debt, District must agree to provide:
 - Audited financial statements
 - Reportable events

Continuing Disclosure—Rules

- “Annual Financial Information” (AFI)
 - Defined in reference to certain information in the OS, such as:
 - Debt Service Extension Base (DSEB)
 - Trend of EAV, Tax Rates, Tax Extensions and Collections, Outstanding Debt, Debt Ratios
 - Short Term Financing Record and Future Financing
 - Summary of Operating Results: General Fund Revenue Sources, Working Cash Fund Summary, Budget Summary
- Audit (and AFI, if applicable) must be filed with EMMA typically 210 days after fiscal year close

Continuing Disclosure—Rules

“Reportable Events”

- There are 14 Reportable Events
- Most common:
 - Payment delinquencies
 - Non-payment defaults
 - Bond calls
 - Adverse tax opinions
 - Rating changes
- Must be filed with EMMA within 10 business days of the occurrence

Consequences of CDU Non-Compliance

- Districts that repeatedly fail to make CDU filings may not be able to access public market
 - Underwriter must reasonably believe that the District will comply with CDU in order to underwrite bonds
 - SEC expects underwriters to enforce market access penalty for CDU non-compliance
- Districts that fail to make CDU filings may also face SEC action for other statements that reach the market, if materially misleading
 - Statements that are reasonably expected to reach the securities market, even if not prepared for that purpose, cannot be materially misleading

Continuing Disclosure – Takeaways and Tips

- Know what you are signing. Review your CDUs.
- Implement policies and procedures and training for continuing disclosure compliance
- Identify individuals responsible for CDU items & have a succession plan
- Consider including all the required tables in your audit
- Subscribe to **EMMA**® for email reminders
 - Include more than one District contact
- Consider hiring a Dissemination Agent

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