

## Pocket Checklist for Issuing Bonds

1. Select and retain qualified, recognized Bond Counsel.
2. Select and retain a Municipal Advisor and/or Underwriter or other lender to assist with the planning and authorization of the bond sale.
  - a) A list of frequently used Oregon Bond Counsel, Municipal Advisors and Underwriters/Lenders can be obtained from the Debt Management Division. Related information is available in the Municipal Debt Advisory Commission [annual report](#).
3. Using the appropriate methodology (i.e., based on Unlimited Tax General Obligation levy rate or annual debt service payment), determine the estimated amount of funds needed and the corresponding size of the issue. Consider the following:
  - a) Capital costs, such as: land, building construction, permits, furnishings and equipment, architect and engineer fees, long range facility plans, communication/outreach plans, etc.
  - b) Bond issuance costs, such as and if applicable: Bond Counsel, Underwriter, Municipal Advisor, rating agency and Paying Agent fees, credit enhancement, bond reserve, and costs of posting an official statement and obtaining cusips, etc.
  - c) When estimating General Obligation Bond debt service and revenues, include estimates for uncollected taxes. Amounts to fund debt service for approximately one year may need to be included.
  - d) Allow for underwriting discount.
  - e) For tax-exempt borrowings, Issuers should obtain Bond Counsel advice pertaining to spending proceeds following the sale date of the bonds.
4. Select the appropriate method of sale (competitive, negotiated, bank loan/direct placement) based on the characteristics of the proposed bonds.
5. Determine the role the public will play in the issuance.
  - a) Will a citizen advisory committee be formed?
  - b) Will or could property taxes or public user fees be affected?
  - c) Will the issue require a vote or referable action?
6. Adopt authorizing actions which, depending on the borrowing, may be a resolution, ordinance, or authorization requiring an election and ballot title, if necessary.
  - a) Ensure Bond Counsel, the Municipal Advisor and/or Underwriter are involved in drafting documents.
7. If a negotiated sale is determined to be appropriate for the characteristics of the bonds, distribute Request for Proposals to select one or more Underwriters for the bonds.
8. Determine available cash flows and alternatives to pay debt service on the bonds.

9. Structure the bonds to match needs with cash flow and minimize costs and other considerations.
10. Budget for the bonds:
  - a) Use a Capital Improvement Fund, if applicable, to expend the bond proceeds on the projects and to collect the earnings on the investment of proceeds.
  - b) Use a Debt Service Fund to pay the principal and interest. Ensure there is a carry-over for the next fiscal year's first payment, since it may occur prior to the collection of taxes.
  - c) Issuers are encouraged to structure tax-backed issues with December and June payments to match up with the property tax cycle and simplify budgeting.

## STEP 2: HIRING BOND PROFESSIONALS TO ASSIST WITH THE BOND SALE

### THE FINANCING TEAM

Most financings require the services of experienced legal and financial professionals. Some are essential, such as Bond Counsel and Municipal Advisor. It is advisable to periodically review contracts with long-standing paid advisors. Some municipalities are not required to go through a formal procurement process for bond related services, however, if the Issuer<sup>1</sup> desires to go through this process, they may periodically re-advertise for bond professionals. Request for Proposal (RFPs) should be sent to several specialist candidates. The proposals received can then be compared and evaluated to form a basis for selection of the professionals. The [Government Finance Officers Association](#) (GFOA) publishes several Best Practices designed to assist state and local governments in the selection of finance professionals.

The Debt Management Division – Municipal Debt Advisory Commission (MDAC) web page has [annual MDAC reports](#) showing data on private sector professionals with whom an Issuer may contract for services. Large, frequent issues of debt may have in-house staff with sufficient experience to plan and execute a significant portion of the work related to a bond sale.

The Municipal Debt Advisory Commission (MDAC) exists for the purpose of assisting local municipalities with bond sales and encourages local officials to make use of its services. It is recommended that all governments with borrowing authority acquire at least a procedural knowledge and understanding of debt issuance before attempting to sell bonds.

### ISSUER/BORROWER

Issuers are the legal entity responsible for authorizing the documents related to the bond sale. This role is generally filled by a local, regional, or state government. The Issuer is generally the entity receiving the bond proceeds, i.e. the Borrower, but in some instances, the two roles may be different. While the Issuer is the legal entity enabling the sale, the Borrower is the entity that, either directly or through additional documentation, is obligated to repay the bonds. Issuers are governed by elected or appointed government officials who authorize the issuance of the bonds. Some Issuers authorize the issuance of bonds for other entities not directly affiliated with the Issuer. This type of issuance is often called a [conduit financing](#). In Oregon, conduit financings are most common for private college, non-profit, housing, and healthcare facilities.

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<sup>1</sup> The term “Issuer” is a general reference to issuing districts, municipalities, and local governments.

## **ISSUER AND/OR BORROWER LEGAL COUNSEL**

Issuers and Borrowers often have their own legal counsel, i.e. a city attorney, general counsel, county counsel, etc.; however, most school district Issuers do not. Bond investors need assurance that the Issuer and/or the Borrower have properly authorized the bonds. Each entity must comply with both state laws and local authorizations. Thus, it is important that the legal counsel has a close working relationship with the Issuer/Borrower and understands authorization rules. It is also often important that the Issuer/Borrower counsel reviews bond documents to ensure accuracy and that any Issuer/Borrower commitments in the bond documents do not conflict with the Issuer/Borrower's other policies and rules.

Local or Issuer staff attorneys often play an important role in bond sales. They are especially vital in ensuring that municipalities are in compliance with local election, meeting, filing, disclosure laws, and other regulations or actions related to the borrowing. Usually in concert with recognized Bond Counsel, they advise in a legal capacity prior to the actual issuance of a legal opinion on the bonds. While the local attorney may perform many of the same or similar legal functions of the Bond Counsel, they do not act as recognized Bond Counsel. Recognized Bond Counsel frequently perform these duties for Issuers when local legal staff are not involved.

## **BOND COUNSEL**

Bond Counsel is an important resource in the debt issuance process. Bond Counsel delivers an opinion, generally to the Issuer, confirming the legality of the bond offering.

Bond Counsel serves two primary functions:

- Opining on the validity of a borrowing.
- Opining on the tax-exempt status of a borrowing.

The legal opinion must be unconditional and is essential for a bond issue to be marketable.

Because of market demands, only a law firm that is recognized as Bond Counsel through experience should act as Bond Counsel. A local attorney or law firm inexperienced in bond matters will rarely be acceptable to the market. Local attorneys may be, and often are, employed for other purposes to assist with debt issuance. Although Bond Counsel are not specially certified or licensed, they must command the confidence and respect of the investment community.

Bonds that are to be marketed nationally should use a "nationally recognized" Bond Counsel. [\*The Bond Buyer's Municipal Marketplace \(the "Red Book"\)\*](#) is a trade periodical

which lists firms recognized nationally as Bond Counsel; national firms are those whose legal opinion is recognized in any geographic area. The Debt Management Division can also provide a list of names and addresses of Bond Counsel firms doing business in Oregon and the Pacific Northwest. Related information is available in the Municipal Debt Advisory Commission [annual report](#).

The services of Bond Counsel include:

- Analyzing the project and potential security and determining whether the proposed borrowing may be legally authorized.
- Authorizing the issuance of the bonds and, when appropriate, delegating authority for certain actions.
- Drafting documents which may include a trust indenture, resolution, ordinance, ballot title, Revenue Bond declaration or other document setting the terms of the bond.
- Drafting the Bond Purchase Agreement or, in conjunction with the Municipal Advisor, drafting/reviewing the notice of sale for a competitive bid.
- Examining all or part of the offering document, known as the Official Statement.
- Participating in due diligence calls with the Issuer, Municipal Advisor and/or Underwriter.
- Drafting the Continuing Disclosure Agreement (CDA) or certificate.
- Providing sample post-issuance compliance policy and procedures.
- Examining transcripts of proceedings to due authorization.
- Determining the bonds were legally executed.
- Submitting a written legal opinion on the legal validity and tax status of the offering and validity of borrowing.

## **MUNICIPAL ADVISORS**

[Municipal Advisors](#) (MA, also referred to as Financial Advisors - FA) may provide a wide range of services to the municipal debt Issuer. In general, the Municipal Advisor will coordinate all elements of the bond sale from inception to closing, including advising the Issuer on the preferred method of selling the bonds (competitive, negotiated or direct placement). Optimally, a Municipal Advisor is competent and thoroughly knowledgeable in areas of local government laws and practices, investor attitudes and preferences, rating considerations, and the bond and money markets. The [Securities Exchange Commission \(SEC\)](#) and the [Municipal Securities Rulemaking Board \(MSRB\)](#) regulate Municipal Advisors. Beginning September 12, 2017, all Municipal Advisor professionals must take and pass the MSRB's Municipal Advisor Representative Qualification Examination (Series 50) to continue engaging in municipal advisory activities. The MSRB has a list of Municipal Advisor firms and Registered Associated Representatives.

Municipal advisory services are provided by independent consulting firms and by banks. The role of the Municipal Advisor is to provide advice to the Issuer regarding best practices for the sale of the bonds. Municipal Advisors negotiate the best terms on the bond sale for a negotiated issue or prepare the bonds for a competitive bid process. Direct placement issues may be closed without Municipal Advisor services.

The Municipal Advisor manages the sale process leading up to the sale of the bonds and advises the Issuer on business terms and the sale process. The Municipal Advisor should be hired before consideration is given to the method in which the bonds are to be sold as the method of sale decision will affect how Underwriters are selected for the bond issuance.

Municipal Advisors may prepare an overall financing plan, recommend the preferred method of sale, advise on marketing the bonds, assist with a presentation to rating agencies, schedule the timing of a bond sale, determine the range of interest costs for different alternative means of financing, provide an estimate of the costs of issuance, help decide on the bond structure and call provisions, set bid requirements, participate in pricing discussions for a negotiated sale, evaluate the sale when it is finished, prepare or review the Official Statement, and participate in a due diligence call to satisfy the informational needs of the prospective investors and regulatory requirements. The Municipal Advisor may also assist the Issuer in preparing an RFP for other service providers.

It is prudent to develop an RFP that describes the specific services the Issuer desires from a Municipal Advisor. This RFP should be sent to several consulting firms. The [Debt Management Division](#) (DMD) can provide a list of Municipal Advisors who have expressed an interest in working with Oregon bond Issuers. Related information is available in the Municipal Debt Advisory Commission [annual report](#). Responses to RFPs from interested advisors enables a Issuer to choose which firm's services will best meet their needs. See GFOA Best Practice titled "[Selecting and Managing Municipal Advisors](#)" or request a sample RFP from DMD.

It is necessary that a formal, written contract be signed with the Municipal Advisor which specifies the duration of the engagement, scope of services, and the basis of compensation. Non-independent Municipal Advisors (those affiliated with broker/dealers) are prohibited from changing roles (i.e. resign as Municipal Advisor and become Underwriter) in the middle of a transaction. Municipal Advisors may bill on the basis of a flat rate, the amount of bonds sold, or time expended. If the Municipal Advisor is paid from bond proceeds, care should be taken to ensure the legality of such payment, in terms of the bond resolution and to plan for payment (if any), should the bonds not be sold. MA fees may be contingent upon the successful delivery of the bond issue. While this form of compensation is customary in the municipal securities market, this may present the appearance of a conflict or the potential for a conflict because it

could create an incentive for the MA to recommend unnecessary financings or financings that are disadvantageous to the Issuer, or to advise the Issuer to increase the size of the financing.

## **UNDERWRITER / PRIVATE PLACEMENT AGENT / PURCHASER**

[Underwriters](#) are securities firms and commercial banks that raise the capital an Issuer desires to borrow by soliciting investors to buy the bonds. The Underwriter ultimately purchases the entire bond issue, even maturities which have not received investor orders, and then resells the bonds to the investors. They may assist the Issuer and Municipal Advisor in providing services in planning and design of the borrowing, spreading the risk of the borrowing among several firms, and marketing the securities in the regional and national public debt markets.

The Underwriter's functions and responsibilities vary significantly, depending on whether the securities are sold using the competitive bid or negotiated method of sale. In a competitive sale, the Issuer and Municipal Advisor are responsible for the planning and design of the bond offering. The Issuer (with the assistance of a Municipal Advisor) solicits bids from competing Underwriters for the purchase of the Issuer's securities. The Underwriter in a competitive sale is also referred to as the Purchaser.

In a negotiated sale, the Underwriter is usually retained once the Issuer decides on a negotiated sale. The Underwriter may be involved in a presentation to rating agencies, schedule the timing of a bond sale, determine the range of interest costs for different alternative means of financing, provide an estimate of the costs of issuance, provide analyses on various bond structures and call provisions, prepare or review the Official Statement and participate in a due diligence call to satisfy the informational needs of the prospective investors and regulatory requirements. The Underwriter ultimately holds an order for investors to place orders for the bonds and then purchases the bonds on terms mutually agreeable to the Issuer and Underwriter.

Private [Placement Agents](#) are generally banks or securities firms which assist the Issuer in the arrangement of a bond sale directly to a bank or other sophisticated investors. A Placement Agent does not actually purchase the bonds from the Issuer; rather they arrange the bond sale to a third party for a fee. They are also involved in structuring the bond issue, preparing a term sheet to solicit banks, compiling a list of potential lenders and negotiating the terms of the issue on the Issuer's behalf.

## **UNDERWRITER'S COUNSEL**

In negotiated sales, private placements or direct purchases, the Underwriter (or Placement Agent or Purchaser) may retain their own counsel. This firm is generally one of the same firms that act as Bond Counsel in other bond transactions, though they don't perform both services on the same transaction. The Underwriter's Counsel will review various aspects of the bond transaction to give assurances to the Underwriter and will negotiate the purchase agreement on behalf of the Underwriter/Purchaser. Underwriter's Counsel is solely responsible to the Underwriter and therefore may negotiate terms on behalf of the Underwriter. Underwriter's Counsel fees are often paid from the expense component of the Underwriter's gross spread. Issuers should be mindful of this significant expense and reach agreement early in the sale process over the fee to be charged by Underwriter's Counsel.

## **DISCLOSURE COUNSEL**

A separate [Disclosure Counsel](#) is sometimes hired to prepare the Official Statement (OS), although an Issuer, Underwriter, Municipal Advisor or Bond Counsel may also prepare the Official Statement. Some Issuers who are frequently in the market with different teams of Underwriters prefer to retain a single firm to prepare the Official Statement to maintain consistency across many different transactions.

## **PAYING AGENT/FISCAL AGENT/REGISTRAR/TRUSTEE**

The [Paying Agent](#), Fiscal Agent or [Registrar](#) facilitates transactions with investors/purchasers of the bonds. The Paying Agent pays to the investors the periodic principal and interest payments throughout the life of the bonds. The Registrar [registers](#) the issue upon its sale and re-registers the issue as it is traded on the secondary market. The Registrar is responsible for maintaining records on behalf of the Issuer. When the Paying Agent is a commercial bank or trust company, it is recommended that the Issuer establish a contract containing time limits regarding forwarding funds to the Paying Agent to provide for payment of interest and maturing bonds. The contract would also specify the use of funds not needed to pay debt service, fees to be charged and specific services to be performed. The Paying Agent must be equipped to pay interest on and redeem bonds as they are due, to cancel bonds and coupons and handle lost or stolen bond issues.

The [Trustee](#) advocates for the interests of the bondholders, taking appropriate administrative and legal actions on their behalf to enforce the requirements of the bond obligation entered into by the Issuer. In the case of refundings with an escrow, Paying Agents serve in the Trustee role as refunding escrow deposit agent.



Escrow Agents are typically engaged for [advance refunding](#) of outstanding bonds. The Escrow Agent manages the refunding bond issue by holding the proceeds from the refunding bond issue in escrow and paying interest; the Escrow Agent also manages the [refunded issue](#) by redeeming/repaying the bonds on the call date.

Some Revenue Bond declarations call for a Trustee, who often serves in the role of Paying Agent: holding funds, purchasing the defeasance securities (typically SLGs or open market securities or Treasuries) and paying the debt service on the refunded issue up to and including the optional redemption date.

Prior to the 1990s, the Paying Agent and Trustee kept record of the investors so that timely payments could be made either by mail or wire to the bondholders. With the advent of electronic record keeping and banking, the Depository Trust Company (DTC) became the record keeper for most bond sales and therefore greatly reduced the role of tracking bondholders by Paying Agents and Trustees. These roles continue to exist for the payment of bonds largely as a backup, should the DTC ever discontinue this service.

## **AUDITORS / VERIFICATION AGENTS**

The Official Statement for a bond issue should contain the Issuer's audited financial statements for the most recently completed fiscal year. Most Oregon governments are required by statute to have independent audits to ensure the financial statements are correctly presented and other directly related information is consistent with the financial statements.

When an Issuer sells advance refunding bonds, the proceeds of the bond issue are often placed in an escrow account and invested in securities that are specified in that Issuer's refunding bond documents. In this type of financing, a CPA firm plays the role of Verification Agent. Both MDAC and investors require an independent verification that cash and securities placed in the escrow account will be sufficient to pay off the refunded bonds.

## **RATING AGENCIES**

One or more credit rating agencies such as Moody's Investors Service, Inc., S&P Global Ratings, Fitch Ratings and Kroll Bond Rating Agency appraise, analyze, and monitor the credit quality of an Issuer. These firms provide credit ratings for use by retail and institutional investors to gauge the credit and default risks inherent in the bond issue. The fee for the rating service is paid by the Issuer from bond proceeds and is based on the issue size, type, and complexity. The importance of a rating is dependent on a

variety of conditions. The Municipal Advisor can assist municipalities with informational requirements for a bond rating and advice on the desirability of an Issuer presentation to the rating agencies. Often, the Issuer's Municipal Advisor or Underwriter will prepare a rating presentation and help the Issuer prepare for a call with the rating analysts.

## **CREDIT ENHANCEMENT PROVIDERS**

An Issuer may choose to obtain credit enhancement to improve the rating to lower the cost of the borrowing. This enhancement is often in the form of a [Bond Insurance](#) Policy issued by a specialty insurance company. Another credit enhancement may be a guarantee from a higher rated credit. The Oregon State Treasury's (OST) guarantee of bonded debt service for qualifying districts under the [Oregon School Bond Guaranty Program \(OSBG\)](#) is an example.

Bond insurance essentially allows an insurance firm to "lend" its rating to a bond Issuer for a fee. The insurance acts to raise the credit quality of the Issuer for each insured issue, which may result in lower interest costs to the Issuer. Bond insurance costs vary based on the size of each issue, the security and the Issuer's underlying credit worthiness. The costs are also based on the total amount of future debt service requirements. Issuers should compare the cost of the insurance with the potential savings resulting from lower interest rates due to the higher credit rating. The insurance is only worthwhile if the present value interest savings from bond insurance exceeds the cost of the enhancement (insurance premium) or if the Issuer would be prevented from accessing the market without enhancement. A [bond reserve surety](#) allows Issuers to pay for a fully funded bond reserve rather than funding it with cash. The same entities that provide bond insurance often provide reserve sureties.

## **OFFICE OF THE STATE TREASURER**

The OST has a wide range of financial responsibilities, including managing the investment of state funds, issuing all state bonds, serving as the central bank for state agencies, and administering the [Oregon Savings Network](#).

The [Debt Management Division](#) (DMD) provides central coordination for all state issued debt, including General Obligation Bonds, Revenue Bonds, and certificates of participation. The Division monitors local and national bond markets, as well as financial and economic trends that impact bond issuance structures and interest rates. Fees charged for DMD services are detailed in [OAR 170-061-0015](#).

## **Oregon School Bond Guaranty Program**

Oregon voters approved Ballot Measure 54 at the November 1998 General Election. This Oregon Constitutional amendment allows the state to guarantee qualified General Obligation Bonds of eligible school districts, education service districts, and community colleges throughout Oregon. As a result, the program allows qualified districts to have their bonds rated based on the state's current credit rating. The program saves districts thousands of dollars in interest costs over the life of the districts' bonds and can be used alone or in conjunction with bond insurance.

The Oregon School Bond Guaranty Program (OSBG), as defined in [Oregon Revised Statutes 328.321 to 328.356](#) is administered by the OST. OST, in this capacity, filed [Oregon Administrative Rules 170-063-0000](#) which guides administration of the program. OST began accepting requests for participation in January 1999.

The OSBG program requires the jurisdiction to submit an application, fee, current audited financial information, an authorizing resolution, and other documentation to the OST. Once the information is analyzed, a Certificate of Qualification is sent to the applicant. Issuers then choose to participate in the OSBG program based on their own cost-benefit analysis. For those Issuers who choose to use the OSBG program, a Confirmation Letter is sent to the Issuer once the Bond Counsel opinion, the final official statement, and other required documentation is received by OST.

Further information on the [OSBG program](#) is available on the OST web site.

## **Private Activity Bond Committee**

[Private Activity Bonds](#) (PAB) are government tax-exempt debt instruments that provide a direct benefit to private businesses. They bear numerous restrictions imposed by federal and state regulations. Specifically, they are subject to the limitations and provisions of the Federal Tax Reform Act of 1986, section 141 of the Internal Revenue Code and [ORS 286A.605 to 286A.645](#).

PABs use a municipality's tax-exempt status as a conduit to obtain tax-exempt interest rates. The Issuer incurs no legal responsibility to repay private activity conduit bonds; rather, the private business's credit quality provides the security for the debt financing and ultimately all repayment responsibilities.

State statute [ORS 286A.615](#) empowers the Private Activity Bond Committee to carry out the following functions:

- Adopt by rule standards for amounts allocated to the Committee for further allocation for economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection,

transportation and other activities that the Committee determines will benefit the citizens of the State of Oregon.

- Develop strategies for reserving and allocating the limit that are designed to maximize the availability of tax exempt financing among competing sectors of the Oregon economy.
- Survey the expected need for private activity bond allocations at least once each year.

The Legislative Assembly allocates the amount of federally authorized private activity bond volume cap among state agencies and the Private Activity Bond Committee for the two calendar years that begin in a biennium. Any volume cap not allocated by the Legislative Assembly is allocated by the Private Activity Bond Committee.

[OAR 170-071-0005](#) and [170-061-0015](#) governs the PAB Committee's fees, operations, and allocation rules. Any volume cap that is not used by December 15 of each year is returned to the Private Activity Bond Committee; by explicit request, the Committee may extend to December 31. This unused volume cap then becomes carry forward, to be allocated during the first Private Activity Bond Committee meeting of the next calendar year. The carry forward allocation is able to be used within three years and expires December 31<sup>st</sup> of the third year. If this carry forward is not used, it is then permanently expired.

The PAB Committee shall, by statute and Administrative Rule:

- Support projects that increase the number of family wage jobs in this state.
- Promote economic recovery in small cities heavily dependent on a single industry.
- Emphasize development in underdeveloped rural areas of this state.
- Utilize educational resources available at institutions of higher education.
- Support development of the state's small businesses, especially businesses owned by women and members of minority groups.
- Encourage use of Oregon's human and natural resources in endeavors that harness Oregon's economic comparative advantages.

The [PAB Committee](#) meets quarterly and the staff of the Debt Management Division of the Office of the State Treasurer provides services to the PAB Committee. The Committee is responsible for processing requests by state and local Issuers for PAB current and carry-forward allocations. The PAB staff maintains the state's private activity bond volume cap records and provides all administrative support to the Private Activity Bond Committee.

### **Municipal Debt Advisory Commission**

The Oregon Municipal Debt Advisory Commission (MDAC) was established in 1975 to assist local governments in the cost-effective issuance, sale, and management of their

debt. The Commission is composed of seven members, including the State Treasurer (or his designee), three local government finance officers, one representative for the special districts, and two other public members.

State statute [ORS 287A.634](#) empowers the Municipal Debt Advisory Commission to carry out the following functions:

- Collect, maintain, and provide information on bonds sold and outstanding and serve as a clearinghouse for all local bond issues.
- Maintain contact with municipal bond Underwriters, credit rating agencies, investors, and others to improve the market for public body bond issues.
- Undertake or commission studies on methods to reduce the costs of state and local issues.
- Recommend changes in state law and local practices to improve the sale and servicing of local bonds.
- Perform any other function required or authorized by law.
- Pursuant to [ORS Chapter 183](#), adopt rules necessary to carry out its duties.

The MDAC strives to improve existing services and to initiate new programs and legislation aimed at lowering borrowing costs and improving debt management practices for local governments, particularly in the area of capital planning and debt administration.

The Debt Management Division provides Commission staffing and services to local Issuers. The MDAC staff can provide broad information on various aspects of bond sales.

### **Annual Report**

State law [ORS 287A.634](#) requires the MDAC to prepare an annual report describing activities of the Commission in the preceding year. This report is available on the [Debt Management Division website](#).

### **Oregon Bond Calendar**

The MDAC keeps a record of upcoming publicly offered bond sales of local districts and state agencies in Oregon and monitors bond market trends and interest rates. The Bond Calendar is available at no charge and may be obtained on the [Oregon State Treasurer's Municipal Debt Advisory](#) web site (see Browse Services section). To optimize marketing of all Oregon bonds, Issuers should review the [Bond Calendar](#) to minimize scheduling conflicts with other Issuers.

The [Statewide Bond Calendar](#) lists all planned, completed, and postponed bond sales for competitive, negotiated, or privately placed sales. This information is based upon

notification of issues (via the MDAC Form 1) and Preliminary and Final Official Statements received from municipalities that issue bonds. Other relevant information included on the [MDAC web page](#) are events related to municipal bonds such as a link to the [Secretary of State election dates, filings](#) and [bond election results](#) and the [Bond Index](#) (a measure of bond interest rate trading levels in the secondary market) and. The index is a weekly average obtained from bond dealers in Oregon for ten and twenty year maturities of both State of Oregon GO bonds and local (A-rated) unlimited tax general obligation (ULTGO) bonds and provides a handy reference for the trend and level of tax-exempt bond interest rates in Oregon.

### **Statewide Database**

The Debt Management Division maintains a database of all outstanding bond issues for all municipalities in the state. For each bond issue sold, the Bond Tracker database is populated with information about all publicly and privately offered local government debt issuance obtained from the MDAC forms submitted by the Municipal Advisor, Underwriter, Bond Counsel or, as needed, by DMD staff in coordination with Issuers and/or bond professionals. The system is updated annually with revised population statistics and property values for Oregon Issuers in order to calculate overlapping debt for Issuers to use in their offering documents and meet their continuing disclosure requirements.

Pursuant to the authority found in [ORS 287A.634](#), the Debt Management Division requests Issuers to verify their long-term financial debt every other year. This is done to ensure the accuracy of information contained in the Bond Tracker system and is especially important in reporting municipal district overlapping debt for disclosure purposes. Each Issuer is asked to respond by either acknowledging the amounts are correct or, if inaccurate, the Issuer is asked to correct inaccurate data and/or add missing data.

### **Overlapping Debt Report**

Using the Bond Tracker system, the Debt Management Division is able to aggregate information on the Issuer's total debt issued, to which any given jurisdiction is subject. This information is used to create a standardized report called the [Overlapping Debt Report](#). The report includes information concerning maturity dates, amounts, interest rates, and overlapping percentages as a proportion of Real Market Value (RMV) for all property tax-backed debt. For example, the residents of a certain city may be indebted through government borrowing by their city, county, school district, and various special districts such as water, sewer, fire, etc.

Free [overlapping debt reports](#) may be requested from the State Treasurer's Office.

### STEP 3: DEBT POLICY CONSIDERATIONS

Many state and local governments have adopted written policies to establish guidelines and consistent practices for debt-related matters. Formal debt policies are often used as a means of establishing credibility with bond rating agencies and investors. The Government Finance Officers Association ([GFOA](#)) encourages Issuers<sup>1</sup> to establish a formal, comprehensive debt policy. This policy establishes debt limits and parameters while providing sufficient flexibility to respond to changing circumstances. The debt policy also furnishes instructive guidance for debt management decision-makers and should be formally adopted by the local elective or appointed government body.

Many Issuers have incorporated informal debt policies into a variety of documents. These documents frequently include official budgets, capital improvement plans, general or comprehensive plans, charters/debt limitation, grant applications, council resolutions, and/or established administrative practices. However, when these policies are scattered, unwritten, or developed on a case-by-case basis, it is unlikely that decisions will consider other current, past, or future policy alternatives. Having a formal set of policies assists debt managers in the decision-making process and helps identify conflicts, inconsistencies, and gaps in a Issuer's approach to financial policy and debt management. Potential benefits of formal policies include:

- Consistency in financial decisions
- Prescription of improvements that are desired
- Identification of strengths and weaknesses in the overall financial system
- Establishment of standard operating procedures to guide daily financial activities
- Measures of performance
- Improvement in bond rating translating into money saved
- Linking of long-term financial planning with day-to-day operations
- Attention to the total financial picture versus single issue
- Significant ability to insulate from fiscal crisis

Formal debt policies describe local government policies and procedures currently in use. Policies also integrate short and long-term capital infrastructure objectives with reasonably conservative estimates of available financial resources. Formal debt policies may also include:

- Purposes for which debt can be issued
- Integration of capital spending and debt financing

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- Debt limitations
- Types and criteria for which debt can be issued
- Debt structure
- Use of taxable debt
- Credit policy
- Method of sale
- Selection of the finance team
- Refunding policy, including savings thresholds
- Disclosure practices and procedures
- State and Federal tax compliance
- Investment of bond proceeds
- Post-issuance compliance

Sample debt management policy and statements may be provided on request for general use when developing a formal debt policy. They will not be exhaustive nor are they appropriate for all situations and Issuers; they are examples of policies and/or ideas, which may be evaluated, altered, and used as appropriate.

## **CONSIDERATIONS**

The process of issuing municipal bonds begins well before the Issuer holds a bond election, prepares an Official Statement, or sells the bonds. The framework for responsible debt management is established in advance by the development of a long-term plan for capital improvements and expenditures. The first step to creating a long-term plan is preliminary analysis involving three broad considerations:

1. Project feasibility (a cost-benefit assessment).
2. Various funding and financing options (e.g. pay-as-you-go cash funding, bonds, bank loans, local option levies, user fees, grants, etc.).
3. The advantages of a public offering (negotiated sale or competitive bid) as opposed to private placement, where private placement is legally allowed.

Issuers should review proposed debt offerings against statutory debt limitations when capital needs and tentative amounts are considered. See the [statutory general obligation debt limits](#) for most Oregon Issuers. The [Debt Management Division Municipal Debt Advisory Commission](#) web page also provides Issuers with [overlapping debt reports](#) for comparison of total debt outstanding to each applicable debt ceiling.



## **Capital Improvement Plan**

A well-thought-out, long-term capital planning program is composed of all the levels of needs and desires for community facilities, balanced by the realism of government's limited resources to serve its population. The equation must include a cost-benefit analysis that produces an objective measure of the best choice, given the variables.

Once a formal capital improvement plan is developed, it is submitted to the municipality's elected officials for approval. If properly prepared, a capital improvement plan will demonstrate a community's commitment to infrastructure improvements and long-term economic well-being. It will also show a realistic and thoughtful evaluation of community financial liabilities and funding resources. This can be a strong positive credit quality indicator to investors and credit rating agencies. Typically, a good plan identifies the following:

- Those community needs that are appropriate for debt financing and do not exceed the statutorily permitted debt levels, if applicable.
- A ranking of each proposed capital improvement project and expenditure item.
- A timeline of when the improvements will commence and the number of years to complete construction.
- The amount budgeted for each year.
- The financing method proposed and a systematic review of all funding alternatives such as tax revenues, user fees, rents, intergovernmental grants and loans, and public-private financing partnerships.

## **Capital Improvement Budget**

The capital improvement budget is adopted based on the capital improvement plan which is typically approved by the governing body. It should include reference to the authorizing statutes for appropriations and the necessary bond issues. The capital budget may differ from the long-term capital improvement plan because of financial constraints and changing circumstances. After adoption of the capital budget, the capital plan should be updated to include any changes necessary in future years as a result of current budget revisions. Future operating costs must be determined once a capital project has been selected. These costs include debt service and the maintenance and operational expense of any physical facility. Operating expenditures should be estimated and adjusted for anticipated inflation.

## **Capital Improvement Projects**

Local governments should evaluate their past economic growth and financial performance, current conditions, and the implications of these trends for the future. Governments experiencing significant community growth usually require capital expenditures on a variety of projects. Capital costs are expected to have a useful life of

more than one year and are defined in [ORS 310.140](#). The average life of the bond issue may not exceed the weighted average useful life of the projects being financed. Capital improvements generally do not include items such as normal operating budgets, routine maintenance and repairs, consumables, and personnel salaries. The following are some examples of capital projects:

- Land acquisition
- Major recreational and cultural facilities
- New construction and improvement or replacement of older facilities to meet the increasing needs and standards of the community
- General community services and infrastructure needs such as schools, sewer and water facilities, police and fire
- Other projects specific or unique to a particular jurisdiction

### **Tax Anticipation Notes**

Local governments sometimes find that the timing of expenditures and the timing of tax receipts do not always align well. To bridge the gap between expenditures and tax receipts, a government may issue tax anticipation notes. Because these notes are a form of cash flow borrowing, rather than a capital project borrowing, some additional policy considerations are appropriate. The local jurisdiction should create additional policies for the following:

- [Arbitrage](#) considerations
- Maximum sizing of notes
- Reinvestment risks and repayment timing

### **Public Employee Retirement System (PERS) – Pension Obligation Bonds**

Pension Obligation Bonds may be used by Issuers to address long-term pension liabilities (reference Government Finance Officers Association advisory "[Pension Obligation Bonds](#)").

Employers must assess certain risks prior to borrowing funds for the purpose of making a lump sum payment to PERS because the payment affects the anticipated value of the total costs and annual payment or the rate relief that the employer is anticipating. These risk variables include, but are not necessarily limited to:

#### *Unfunded Actuarial Liabilities (UAL) and Lump-sum Payment Treatment*

UAL is the difference between the present value of accrued liabilities and the value of assets (either smoothed or fair market value) as of a specific date.

Lump-sum payments will not change accrued liabilities, as these actuarial liabilities represent future benefits to be paid to members or their beneficiaries. Instead, lump-sum payments will be treated as prepaid contributions, which will

increase the actuarial value of assets attributed to the employer making the payment. By increasing the value of assets to offset the actuarial liabilities, the UAL will be reduced, therefore reducing the employer's rate.

The reduction in the individual employer's contribution rate will be equivalent to an amortization of the lump-sum payment over the expected payroll of the employer, increasing with wage inflation over the course of the remaining amortization period, and discounted at the assumed earnings rate. The rate relief, as a percentage of the employer's payroll, may change over time depending on the actual future payroll of the employer and assumptions and methods adopted by the Board for financing the system's obligations.

#### *Basis for Lump-sum Payments*

The most recent actuarial valuation will become the basis for calculating UALs. Lump-sum payments made after completion of the valuation will be based on those results.

An employer may have an outstanding UAL that was calculated on an individual employer basis, or as a participant in an actuarial funding pool. A lump-sum payment may be made to offset all, or a portion of, the outstanding UAL regardless of its source.

#### *Changing Nature of UALs*

Each time a valuation is conducted, it provides a new assessment of the system's financial position. Employer UALs are an important product of each valuation. Valuations represent a financial "snap-shot" of employer pension obligations as of a particular point in time. As subsequent valuations are conducted, they provide a fresh look at the system's pension obligations. These obligations can experience significant changes from valuation period to valuation period due to actual interest earnings differing from the assumed rate and changes in the assumptions or benefits. This, in turn, can cause the UAL of the system and of individual employers to also change.

#### *Assumed Rate of Return on Investments*

The PERS actuarially assumed rate of return on investments is available on the [PERS website](#). This estimate is what the PERS Fund expects to earn, on average, over a 30-year period and is the basis for amortizing employer liabilities and surpluses. This would also be the basis for amortizing employer lump-sum payments. Because this assumption is subject to review during each valuation, it could change if necessitated by a change in long-term market projections.

A decrease in the assumed rate would cause a reduction in the anticipated value of the unamortized portion of the lump-sum payment, thus reducing the amount of rate relief associated with the lump-sum

payment as a percentage of payroll. In turn, an increase in the assumed earnings rate will result in an increase in the anticipated value of the unamortized portion of the lump-sum payment, thus increasing the amount of rate relief as a percentage of payroll. In recent years, the PERS Board has reduced the assumed rate and may continue to adjust the assumed rate.

#### *Side Account*

If a supplemental lump-sum contribution is made by an employer participating in either the State and Local Government Revenue Pool (SLGRP) or the School Districts' Pool, it will be held, with interest, in a Side Account according to provisions of the [PERS administrative rule \(OAR 459-009-0084\)](#). This is necessary so that the employer making the supplemental contribution receives the benefit of that contribution, rather than being included with the entire pool. The value of the Side Account is treated as an employer asset to offset the UAL. The Net UAL is the UAL less the value of the Side Account.

#### *Earnings Crediting Policy*

Earnings credited to the employer via lump-sum payments will be actual regular account earnings, or losses, adjusted for administrative costs and charges used to fund the contingency reserve. This can directly impact the value of the unamortized portion of a lump-sum payment in future crediting periods.

Because lump-sum payments will be amortized based on the assumed earnings rate, any crediting of earnings to the lump-sum payment that is below the assumed earnings rate would result in a reduction in the anticipated value of the lump-sum payment and the employer would receive less of an offset to the employer's UAL costs than originally anticipated. Likewise, earnings credited in excess of the assumed rate would result in an increase in the anticipated value of the lump-sum payment, which would provide a greater offset to the cost of an employer's pension liabilities.

#### *Projected Payroll of Employer*

The reduction in an employer's contribution rate attributable to a lump-sum payment is based on a projection of the last known payroll of the employer. If the payroll of the employer increases, either faster or slower than assumed, the employer contribution (as a percentage of payroll) will decrease or increase, but the dollar amount of annual rate relief will remain unchanged.

Just as a change in the assumed earnings rate or the amortization period may affect the rate relief, a change in the assumed growth in payroll will also impact the rate relief as a percentage of payroll.

### *Effect of Legal Contingencies*

Unsolved questions of law, including, but not limited to, those raised by litigation, may change the calculation of liabilities or assets.

### **Derivatives**

With the onset of the financial crisis in 2008, the risks related to derivative products such as swaps, hedges and rate locks are now more widely visible. Experienced, sophisticated Issuers may want to consider derivative products as part of a total portfolio, but must recognize and understand risks associated with such products. It is important that clear policies be developed long before entering into transactions which involve derivatives. MDAC has a sample swap policy from the [City of Portland](#) and the [Port of Portland](#). Any derivative policy should address the following areas:

- Responsible Parties
- Process for approval
- Purpose
- Form of agreement
- Method of procurement
- Risk Analysis
- Risk Mitigation
- Counter party credit ratings
- Collateralization and downgrade provisions
- Monitoring & Mark to Market
- Termination

## STEP 4: TYPES OF DEBT INSTRUMENTS

The following list briefly summarizes the types of debt and financial instruments authorized for Oregon local Issuers. For further definitions and information on varying types of bonds, see the [MSRB Glossary](#).

### General Obligation Bonds

[General Obligation \(GO\) bonds](#) typically benefit a community as a whole and are secured by the full-faith-and-credit and taxing power of the Issuer. The Issuer pledges unconditionally to pay the interest and principal on the debt as it matures. For Oregon local Issuers, a GO pledge means that the Issuer<sup>1</sup> pledges all of its unrestricted resources to meet debt service, including an *unlimited property tax* on all taxable property within the district. Local government GO bonds may only be issued if authorized by a ballot election of the issuing jurisdiction. Voter authorized General Obligation Bonds are supported by an unlimited tax levy outside of the limits imposed by the [Oregon Constitution](#), Article XI, Section 11.

Under [ORS 287A.001-287A.145](#) General Obligation debt can be incurred for capital costs, including costs associated with acquisition, construction, improvement, remodeling, furnishing, equipping, maintenance or repair, having an expected useful life of more than one year. This does not include maintenance and repair (the need for which could be reasonably anticipated), supplies, and equipment that are not intrinsic to a structure. General Obligation debt has been the traditional form of financing for capital projects such as land acquisition, schools, water facilities, sewerage facilities, and roads that are owned and operated by governments. GO bonds can also be issued to replace outstanding General Obligation Bonds. See [Refunding Bonds](#) for a discussion of such bonds.

There are several types of GO bonds, which place varying emphasis on the full-faith-and-credit security and the Issuers' taxing ability. These types of ULTGO bonds are categorized by source of repayment as follows:

#### *Non Self-Supporting GO Bonds*

Non-self-supporting GO bonds or tax-supported bonds are those which are paid for by property taxes or other tax sources. School district bonds in Oregon are traditionally supported by property taxes and are historically GO non-self-supporting bonds. Non-self-supporting and partially self-supporting GO bonds determine an Issuer's net bonded debt. Net bonded debt is a measure of the debt burden on property of the Issuer.

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<sup>1</sup> The term "Issuer" is a general reference to issuing districts, municipalities, and local governments.

### *Self-Supporting GO Bonds*

[Self-supporting](#) GO bonds are debt issues that carry the Issuer's ULTGO pledge and have a revenue stream separate from the Issuer's taxing authority to repay the bonds. The bond proceeds construct a revenue-generating enterprise or facility that provides the primary source of funds for bond repayment. These bonds may be fully self-supporting or only partially self-supporting. If fully self-supporting, the bonds are not included in the net bonded debt of the Issuer, but are included in its gross bonded debt. If only partially self-supporting, then 100% is included in the net bonded debt calculation. (See [Computing Net Direct Debt](#)). These are often referred to as [double-barreled bonds](#).

## **Full Faith and Credit Obligations**

[Full Faith & Credit Obligations](#) (FF&C) may be secured by a variety of pledges except as restricted by the Oregon Constitution or statutes or by local charter. FF&C obligations are also authorized under [ORS 271.390](#). Limited Tax Revenue Bonds are authorized under [ORS 287A.150](#). In such a case, the Issuer is still required to use all legally available resources to meet its obligations. FF&C obligations are backed by the general revenue and taxing power of the Issuer within the limits of the [Oregon Constitution](#), Article XI, Section 11. FF&C obligations do not include a pledge of an unlimited property tax on all taxable property within the district, as is the case with GO bonds.

FF&C obligations are generally perceived by investors to have a higher risk than the unlimited-tax General Obligation Bond, but are still perceived to be a more secure investment than COPs since they are not subject to an annual appropriation process. The difference in interest rates will depend on numerous factors, including the financial condition and reputation of the Issuer, the revenue source used to repay the debt, the security pledge, the total amount of FF&C debt outstanding and the nature of the asset being financed.

Rating agencies may rate at the same level as the full unlimited-tax general obligation rating of the Issuer; however, in early 2017, Moody's Investors Service changed their rating methodology for FF&C obligations, resulting in rating upgrades for many Issuers to the same level as their outstanding ULTGOs. S&P historically has been rating FF&C and ULTGO's at the same level.

There are two types of FF&C obligations which place a varying emphasis on credit security and the Issuer's taxing ability. These types of obligations are categorized below.

### *Full Faith & Credit (non-self-supporting)*

FF&C (non-self-supporting-N) obligations are paid by property taxes or other tax sources within the limits of the [Oregon Constitution](#), Article XI, Section 11.

### *Full Faith & Credit (self-supporting)*

FF&C (self-supporting-S) obligations are paid from a project's revenue stream. The proceeds are used to construct revenue generating enterprises or facilities, or there is an independent source of funds for repayment. The taxing authority behind the security pledge on the obligation is limited by the [Oregon Constitution](#), Article XI, Section 11.

## **Revenue Obligations and Bonds**

[Revenue Bonds](#) are usually payable from revenues generated by the project or enterprise. They may be issued under the authority of [ORS 287A.150](#) and must adhere to applicable state and federal statutes and regulations. Alternatively, Revenue obligations may be issued under [ORS 271.390](#). Both bonds and obligations have the same security structure and considerations with the caveat that Revenue Bonds are more widely recognized by investors outside of Oregon markets. No ad valorem property taxes are levied or pledged. Revenue bondholders do not have recourse against the full-faith and unlimited or limited taxing power of the government and these bonds are expected to be fully self-supporting. The bonds are generally repaid from user charges, system development charges or from enterprise earnings and do not rely on the ad valorem taxing powers of the government for their security. The following are advantages to issuing Revenue Bonds:

- Governments have the ability to finance traditional projects without pledging the power to tax, reserving this power for other services. Special districts have been created to promote projects as an alternative to general government action. Although they don't have the power to tax, they may have the power to float bonds and serve as conduits for financing non-governmental activities in the tax-exempt market.
- Those responsible for the payment are those who benefit reflecting a "user pays" philosophy.
- Revenue Bonds are usually not restricted by various debt limitation statutes. They generally also are not subject to the lending of credit prohibition in the Oregon Constitution, and so there may be more flexibility in the kinds of projects financed.
- Voter approval is usually not required. However, bonds issued pursuant to [ORS 287A.150](#) may be subject to voter approval if sufficient petition signatures are gathered within the timeframe prescribed for non-emergency actions of the Issuer. A city's charter may have additional restrictions and could require voter approval.

Revenue Bonds often have other associated requirements and several distinctive disadvantages such as:

- Repayment revenue depends on the continuity of the revenue source and the Issuer's willingness to raise rates as necessary to repay the bonds. For certain Revenue Bonds, this may result in higher interest rates and issuance costs than ULTGO bonds because of their limited security, but not always. The strength of the



system could put the rating at the same level as the ULTGO. Revenue Bonds issued for essential services, such as water and sewer, may carry ratings and borrowing costs comparable to an Issuer's ULTGO or potentially higher LTRB credit.

- Higher coverage requirements for issuing additional parity bonds (i.e. revenues compared to debt service).
- Depending on the financial health of the system, the Issuer may have to meet debt service coverage requirements.
- Requirement to maintain a debt service reserve fund, for certain types of Revenue Bonds.
- Generally require more complex financial arrangements.
- Bonds issued under [ORS 287A.150](#) require that voters have the opportunity to refer the question of issuing the bonds to a public vote through a petition process. The timeframe and elector signature requirement necessary to refer the issuance to a public vote varies depending on how the proposed bonds were authorized (ordinance vs. resolution).

Revenue Bonds are often categorized by source of revenue. Some examples of different types of Revenue Bonds follow.

#### *Enterprise Revenue Bonds*

Enterprise Revenue Bonds finance projects (i.e., water and sewer) that are expected to generate revenues to repay the debt. The bonds are issued under the provisions of [ORS 287A.150](#) or under other specific statutes.

#### *Special Revenue Bonds*

Special Revenue Bonds are secured by special revenues such as an assessment or gasoline tax. These funds are directed to a special fund established for the purpose of bond repayment. The contents of the fund form the bond's security and repayment source.

#### *Double-Barreled Revenue Bonds*

Some Revenue Bonds are dually secured with a dedicated revenue source and a jurisdiction's qualified or unqualified tax pledge. This enhancement generally results in a higher credit rating for the security which can result in lower interest rates for the bonds.

#### *Industrial Development Revenue Bonds*

[Industrial/Economic Development Revenue Bonds](#) (IDBs, IDRBs or EDRBs) are Revenue Bonds authorized to be issued in Oregon through the Oregon Business Development Department, port districts, and cities of over 300,000 in population. These bonds finance construction of facilities for eligible private enterprises to increase employment and to promote economic development and diversity. IDBs are [private activity bonds](#) and require an allocation of the State's private activity bond volume cap to qualify as tax-exempt.

## Appropriation Bonds

[Certificates of Participation](#) (COPs), sometimes sold to investors through a Lease Purchase Agreement, may be an alternative to issuing bonds and are often used to finance real property or equipment, construction of public facilities, and facility maintenance and renovation. COPs are authorized under [ORS 271.390](#). COP's principal and interest (debt service) payments are not secured by a particular revenue source nor does the government have the authority to levy extra taxes beyond constitutional limits to pay debt service. COPs are secured by an obligation of the government to make regular payments to meet debt service and, most commonly, a security pledge of the real property or equipment. In the typical COP, if the Issuer defaults, the structure or asset is “repossessed.” The security of the instrument, in the eyes of the investors, lies in the expectation that the government will choose not to forego use of the structure or asset which may be a facility critical to the government’s function. COPs differ from Full Faith and Credit Obligations in that COPs are subject to annual appropriation and therefore are not bonds and not subject to certain debt limits. Since they are subject to annual appropriation, collateral (if used) is generally viewed as one means to incent the Issuer to keep appropriating or lose access to an essential public asset. Since the real credit is the annual appropriation of the Issuer, highly rated Issuers sometimes issue COPs with little or even no collateral. In these cases, future access to the capital markets would be difficult should they fail to appropriate for the payment of the COP.

Some attributes of Certificates of Participations include:

- No voter approval is required, nor is adherence to the restrictions of the Uniform Revenue Bond Act ([ORS 287A.150](#)).
- General fund revenues, at the option of the governing body, may be used to pay the debt service.
- Interest rates are generally higher because the payments are subject to annual appropriation and lack a pledge of specific taxes.
- COPs are more complex than GO bonds. This may result in higher issuance costs and fees from service providers (Bond Counsel, MA, Underwriter).
- COPs are typically rated at least one notch below the Issuer’s GO rating.

## Urban Renewal Bonds

[Tax Increment](#) (Urban Renewal) Bonds, are authorized for cities, designated agencies of cities, and counties as authorized by the [Oregon Constitution](#), Article XI, Section 11c and [ORS Chapter 457](#) (Urban Renewal of Blighted Areas—Tax Increment Financing of Urban Renewal Financing). Urban Renewal Bonds are repaid by property taxes but the agency has no control over the amount of property tax revenue generated. They may be used for infrastructure improvements such as streets, sewers, property acquisition and housing development for the purpose of remedying “blighted” conditions within a specific community. The repayment source is limited primarily through taxes on any increase in assessed value above the previously established

frozen base. This is referred to as “Divide the Taxes Revenues”. To use these bonds, an urban renewal area must be designated and property assessed valuations for this designated area are then “frozen” levels.

Divide-the-Tax Revenues are calculated by multiplying the incremental assessed value of an urban renewal area by the consolidated billing tax rate. The consolidated billing tax rate is the sum of certain tax rates of taxing districts that overlap the area. The incremental assessed value is the difference between the frozen base and the current assessed value of all taxable property in the area.

The security for the borrowing is the revenues generated from the future growth in property tax revenues resulting from the urban renewal improvements and from the growth in assessed values under Oregon property tax law. These bonds are riskier than General Obligation or most Revenue Bonds because there is no guarantee that resultant property values and tax revenues will increase sufficiently to repay the urban renewal. Unless the agency has special levy authority, they have no control over the amount of taxes received each year. Consequently, this usually results in lower bond ratings and higher interest rates paid on the bonds.

## **Local Improvement District Financing**

Local Improvement District Bonds, known as Assessment Bonds are authorized in [ORS Chapter 223](#). These bonds are secured by charges or assessments to property owners who benefit from the improvements. To collect the charges or assessments, municipalities may form Local Improvement Districts (LID) within which the improvements are to be made.

Special districts, such as county road districts, may use special assessment procedures and authority to issue bonds to finance various local improvements such as sewer, water and streets. Special Assessment Bonds are issued for the amount of the unpaid assessments and an amount necessary to establish a debt service fund and pay issuance costs. Properties that benefit from the improvements are proportionately assessed the actual cost of the improvement. The method of distributing the cost of the improvements among the benefitted properties may be determined in a number of different ways and is determined by the governing body. The assessment payments are used to meet debt service obligations. Since the timing of assessment pre-payments from benefitting property owners are unpredictable, the credit analysis of improvement bonds is more complex than certain other types of bonds. Assessment bonds are typically structured as a term bond with one maturity and a call provision which allows redemption from assessment payments at any time. Some assessment financings are issued as Full Faith and Credit Obligations ([ORS 271.390](#)) or Limited Tax Improvement Bonds (ORS 287A.150) with the assessments as the expected primary source of bond repayment, but pledging the Issuer’s full faith and credit as additional security for the obligations.

If the Issuer uses its full faith and credit to secure the obligations, it is important that the Issuer develop internal policies and procedures to minimize the risk that the Issuer's general revenues will be needed to repay the bonds. These policies and procedures should include a minimum property value to assessment ratio which considers all liens on the property. Some Issuers require additional collateral from property owners that own large portions of the LID, whose assessed value versus assessment ratio does not meet the guideline or may not meet the financial standards of the Issuer. Issuers must also determine the interest rate to be charged on assessment contract. Many Issuers "pass-through" the rate on any bonds issued to finance the assessment, plus an additional "bump rate" intended to offset the risk of payment delinquencies and other risks.

## **Private Activity Bonds**

[Private Activity Bonds](#) (PABs) are government debt instruments issued for the direct benefit of private businesses. These bonds bear numerous restrictions imposed by federal and state regulations. Specifically, they are subject to the limitations and provisions of the Federal Tax Reform Act of 1986 of the Internal Revenue Code and [ORS 286A.605 to 286A.625](#).

A frequent advantage of PABs is the private use of a municipality's tax-exempt name as a conduit to tax-exempt interest rates. Another advantage is that the government Issuer incurs no legal obligation to repay private activity conduit bonds; rather, the private business' credit quality provides the security for the debt financing and ultimately all repayment responsibilities.

If proposed Private Activity Bonds are to be sold in the public debt markets (as opposed to a private placement or bank loan), Issuers may wish to impose minimum credit rating standards, minimum bond denominations and other restrictions, in order to minimize the risk that lower rated bonds are purchased by investors that may not have the capability to fully understand the risks of the bonds.

The paramount consideration for the issuance of PABs in the State of Oregon is to maximize economic benefits to the citizens of the State by the promotion of appropriate economic development and other public purposes. PABs are issued to increase the number of family wage jobs, promote economic recovery in small cities heavily dependent on a single industry, emphasize development in underdeveloped rural areas, utilize educational resources available at public universities, support development of Oregon's small businesses, including businesses owned by women or minority groups, encourage use of Oregon's human and natural resources in endeavours that harness Oregon's economic comparative advantages, and assist lower income families to obtain housing.

[Private Activity Bonds](#) authorized for a variety of uses including: single family mortgage, small issue industrial development, student loans, water/sewer/solid waste, hazardous waste facilities, district heating and cooling, local gas and electric, and tax-increment financing bonds.

Private Activity Bonds are subject to a statewide bond volume cap limit. The amounts allocated for PABs, as provided in [ORS 286A.615](#), are determined on a per capita basis using U.S. Federal government census data for Oregon's population. The Oregon Legislature determines PAB allocations each calendar year for the various state agencies such as the Oregon Economic Development Commission, Business Development Department, Housing and Community Services Department, Office of Energy, and the PAB Committee. The [current volume cap and allocations](#) are updated after each meeting.

The Oregon State PAB Committee is responsible for the allocation and reallocation of PABs among local governments, districts, and other public Issuers. Oregon Administrative Rule [170-71-0005](#), Allocation of Private Activity Bond Limit, provides PAB allocation guidance and procedures for Oregon local governments and municipalities. For additional information, contact the State Treasurer's [Debt Management Division](#).

## **Short Term Debt**

By convention, short-term debt is defined as debt with a stated final maturity at the time of sale of 13 months or less. General Obligation and Revenue Bonds are typically long-term debt, whereas short-term debt instruments are usually referred to as notes or warrants. Local governments, districts and agencies may, pursuant to [ORS 287A.180](#), pledge anticipated taxes, grants, bond proceeds, or other revenues when entering into contracts with lending institutions for short-term financing. Obligations issued in anticipation of taxes or other revenues may not be issued in an amount greater than 80 percent of the amount budgeted to be received in the fiscal year in which the obligations are issued. Such obligations may be repaid according to the schedule determined by the governing body.

The Office of the State Treasurer, Debt Management Division does not track municipal debt of less than 13 months. Several types of short-term instruments are described below.

### **Tax Anticipation Notes and Warrants**

[Tax Anticipation Notes](#) (TANs) are issued to provide interim financing for operations to which taxes are committed but not yet collected. In general, these instruments are used to alleviate a cash flow situation in which collections do not coincide with expenditure needs. Usually TANs

are retired from tax collections, and only from proceeds of the tax levy whose collections they anticipate to be used for repayment.

Issuers of TANs may be able to access the public market if the amount to be issued is large enough and the credit quality is strong. Otherwise Issuers may look to a private placement with a bank. School districts, education service districts and community colleges also have access to the Oregon Education Districts Short-Term Borrowing Program which pools together Borrowers allowing them to gain access to the public market and save on costs of issuance.

### **Bond Anticipation Notes**

[Bond Anticipation Notes](#) (BANs) are issued to provide immediate funds to begin a project prior to issuing approved bonds. Obligations issued to provide interim financing must mature not later than five years after the interim financing is issued. In periods of market instability and volatile interest rates, Bond Anticipation Notes may be used to delay the sale of a long-term debt issue until the market climate becomes more favorable to the Issuer. BANs may be sold in a fashion similar to bonds or more commonly they are sold as direct bank placements or as lines of credit. Other considerations related to the issuance of BANs include:

- Difference between long term rates or cost of capitalizing interest versus short term rates.
- Timing of ratings on long-term debt.
- Coverage requirements related to Revenue Bonds.
- Actual cost of the project.

It is important to note, however, that deferring long-term debt involves the risk that interest rates may rise from the time of the planning phase of the project to the actual issuance of the permanent financing. Care must be taken in financial projections to allow sufficient room in projections for some upward movement in interest rates.

### **Revenue Anticipation Notes**

[Revenue Anticipation Notes](#) (RANs) are used as interim financing prior to collection of revenues that will be generated once a project is completed. RANs may also be used for operating purposes prior to collection of specific revenues.

### **Grant Anticipation Notes**

[Grant Anticipation Notes](#) (GANs) may be used to finance a project for which a state or federal grant has been committed.

## **Refunding Bonds**

Refunding Bonds are issued to replace or refinance previously issued debt with new debt. Refunding is typically used to restructure debt, to save borrowing costs through lower interest rates and revise legal restrictions or covenants. There are two principal types of Refunding Bonds as noted below.

### **Current Refunding**

Oregon Law [ORS 287A.360](#), allows the redemption of bonds up to 1 year in advance of their call date to be considered a current refunding and not fall under the state's advance refunding rules. Federal law defines a current refunding as the refunding of outstanding bonds within 3 months of their optional call date.

### **Advance Refunding**

Advance Refunding occurs when outstanding bonds are refinanced 90 or more days before the refunded bond call date. Bond proceeds are invested in an irrevocable escrow structured so that the escrow generates sufficient revenues to pay the debt service on the refunded bonds up to and including the redemption date. Refunded Bonds defeased in accordance with their bond indenture are technically no longer considered outstanding until the call date and do not count against the Issuer's debt limitations, as long as they are legally defeased. To ensure the escrowed proceeds produce the expected payments, non-callable, Full Faith and Credit obligations of the US Government are required.

The federal government restricts yield on the investment of the proceeds of an Advance Refunding Bond. State regulations also limit the size of the Refunding Bond and the manner in which the proceeds can be invested. State regulations require that Advance Refunding Bonds be sold only to achieve a net dollar benefit to the Issuer or for debt reorganization purposes. An Advanced Refunding must comply with [OAR 170-062-0000](#).

Advanced Refunding proceeds were most often invested in special State and Local Government Series (SLGS) Securities. SLGS are securities offered by the U.S. Treasury directly to state and local government entities as an investment alternative which assists Issuers of tax-exempt securities in complying with yield restrictions and arbitrage rebate provisions of the Internal Revenue Code. SLGS are subject to the federal debt limit and may be unavailable if the debt limit is reached. As a consequence, Issuers may have to procure securities on the open market through a bidding process. While this process is commonly used by Issuers when SLGS are not available, it can carry more risk and involve more complexity. Bond professionals will be of assistance in navigating this process should the need arise. Open Market Securities (OMS) may offer better yield than SLGS and could be used to fund an escrow even when SLGS are available.

When available, SLGS securities are purchased through the U.S. Treasury and additional information can be obtained at <http://www.treasurydirect.gov>.

Issuers of Advance Refunding bonds that are issued more than 1 year prior to a call must comply with [ORS 287A.360-287A.380](#) and the State Treasurer's Administrative Rule detailing the Procedure for Submission, Review and Approval of an Advance Refunding Plan, [OAR 170-62-0000](#)). The December 2017 federal Tax Cuts and Jobs Act (TCJA) eliminated tax-exempt advance refundings.

## **Zero Coupon, Capital Appreciation, and Deferred Interest Bonds**

Typical fixed rate bonds pay interest every six months until they mature. These are also referred to as Current Interest Bonds. [Zero Coupon](#), Capital Appreciation (CABs), and Deferred Interest Bonds (DIBs) do not pay current interest, but rather delay all payment to the investor until maturity. These bonds are a tool used by Issuers to manage the amount of annual debt service due and, for GO bonds, the resulting levy rate. Interest accretes until the maturity date and is calculated every 6 months based on the accreted value. Since the accreted interest is not paid to the investor in the period it accretes, the debt service due or levy rate is lower than it otherwise would be with all current interest bonds. It is important to note that these types of bonds appeal to a different segment of the bond market and typically result in a higher borrowing cost than current interest bonds.

## **Variable Rate Bonds**

Variable Rate Bonds do not have a fixed interest rate, rather the interest rate is allowed to fluctuate in response to particular market rates. The rate is periodically reset based on a period that is generally set by a remarketing agent, who is hired by the Issuer and remarkets the bonds each period at the lowest rate that the remarketing agent believes is necessary to remarket all of the outstanding bonds. This period can range from every day to several years. The bonds that are remarketed are called Variable Rate Demand bonds. Since it is possible that a remarketing may fail, [Variable Rate Demand Bonds](#) require a bank to provide liquidity to buy any un-remarketed bonds. This market is very large and trades occur quickly. It is also a market for only the highest rated securities so, if an Issuer is not at least AA rated, the bonds will probably need credit enhancement, most commonly provided by the same banks that provide the liquidity. These transactions bear significant risks related to interest rates, bank credits, and enhancement/liquidity renewals. Additionally, these transactions may be complicated and have higher issuance costs, and therefore may not be suitable for all issues. Since the interest rates vary on Variable Rate Bonds, the Issuer must be prepared to pay high interest rates at any point in time. However, the long-term average interest rate for this type of transaction is well below the long-term average rate on fixed rate debt.



## STEP 5: METHOD OF SALE

The three main methods of a bond sale are [Competitive](#), [Negotiated](#), and [Private Placement](#).

The lack of agreement among Issuers<sup>1</sup>, Municipal Advisor and Underwriters about the relative merits of Competitive vs. Negotiated sales has resulted in considerable debate and discussion over the issue. A large majority of the research studies on the issue suggest an advantage to Competitive sales, yet about 75-80% of bonds nationally are sold through negotiation. Each of the three methods offer different benefits that may result in one method being more suitable than another. For more information, read <http://www.munibondadvisor.com/SaleStudies.htm>

GFOA Best Practices recommended that the Issuer and its Municipal Advisor carefully consider the characteristics of the proposed bond sale and select the method of sale that is best suited to those characteristics. Investment bankers and Underwriters seeking to be hired as Underwriter for a Negotiated sale should not be consulted on the method of sale decision due to their inherent conflict of interest. As such, the Municipal Advisor should be hired before any decision is made as to whether the bonds will be sold through Competitive bidding or negotiation.

It is optimal for the Issuer to have debt policies in place which ensure that:

- The most appropriate method of sale is selected in light of financial, market, transaction-specific, and Issuer-related conditions. Many Issuer's debt policies state that Competitive sales will be used unless there is a clear benefit to using a Negotiated sale. The method of sale is evaluated for each bond issue, including an assessment of the different benefits and risks associated with each method.
- The governmental entity should be able to explain to its governing body and citizens the rationale for its decision.

### Competitive Sales

Competitively bid sales are a frequent method of choice for well-rated Issuers selling reasonably sized bonds because competition drives the cost of the issue to the lowest possible level. Consequently, Underwriters bid for these bonds with the comfort of knowing that investors understand and buy them without an extensive educational process. Conditions that generally favor a Competitive sale include:

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<sup>1</sup> The term "Issuer" is a general reference to issuing districts, municipalities, and local governments.

- The rating of the bonds is “A” or better.
- The security of the bonds includes the Issuer’s full-faith-and-credit or a strong, historically performing revenue source, such as water or sewer revenues.
- The bond structure does not include complex features that require excessive explanation to the market.

A general outline to a Competitive bond sale is as follows:

1. The Issuer hires outside professionals (usually a Bond Counsel and Municipal Advisor) to review the nature of the project and help them determine the financing requirements.
2. The Issuer, with the assistance of the financing team, prepares a Preliminary Official Statement (POS) that describes the Issuer, the credit structure, the finances, local economy and other items that may be important to potential bond investors.
3. The Bond Counsel and Municipal Advisor prepare legal documents related to the sale including a Notice of Sale (NOS) describing the process for bidders (usually investment banking firms) to submit bids for the bonds.
4. The Issuer’s governing body passes/approve the required authorizing documents to sell the bonds.
5. The Issuer and Municipal Advisor prepare a rating presentation of the credit highlights and schedule a conference call or meeting with the rating agency.
6. The Bond Counsel and Municipal Advisor arrange for the dissemination of the POS and NOS.
7. On the date and time specified in the NOS, the Issuer receives bids for the bonds. The bidders provide bids based on their review of the bond credit worthiness and their perception of investor interest in the bonds. Bids can be received via online bidding programs. The Issuer awards the bonds to the lowest cost bidder. Once the bids are awarded, the winning bidder owns the bonds and can then resell the bonds to investors. The winning bidder receives compensation based on a percentage of the par amount but also takes on the risk they can find investors to purchase the bonds. The ultimate amount of profit the winning bidder receives is based on the price at which they resell the bonds to investors.

#### *Official Bid Form*

For Competitively issued bonds, Issuers should include a NOS in the POS. Most commonly, Competitive issues use an electronic platform to accept bids. Two nationally recognized platforms are Ipreo/Parity and MuniAuction/[Grant Street Group](#). Issuers submit the NOS to the electronic bidding service and the details of the sale are posted on a website. Bidders sign up and submit bids using a standardized format which does not allow submittal of bids that do not meet the requirements of the NOS. The Issuer

may view the sale results, confirm the bid calculations, and award the bid electronically after the sale has closed.

#### *Awarding the Bid on Competitive Sales*

Acceptable bids must adhere to the terms and conditions of the NOS. The Issuer, Bond Counsel, and Municipal Advisor should be in close contact during the sale to ensure the bids conform to the NOS. One bid should be identified as the apparent winner, subject to later verification. The winning bid is generally awarded based on the lowest True Interest Cost (TIC) but other metrics may be used if identified in the NOS. The Municipal Advisor will verify the computation provided by the electronic bidding platform for the winning and cover bids and Bond Counsel will verify the bid meets all of the parameters identified in the NOS.

Issuers commonly require a good faith deposit from the winning bidder shortly after the award of the bonds. Typically, this good faith deposit is provided by wire transfer to the Issuer by a certain time on the day of the award and is generally set at approximately one percent of the par amount. Most Underwriters will wire the good faith deposit to the Issuer on the same day as the bid. The good faith amount is deducted from the purchase price wired at closing and the Issuer gets to keep interest earnings on the deposit.

## **Negotiated Sale**

In a Negotiated Bond Sale, an Underwriter or team of Underwriters is selected through a Request for Proposals process to help prepare the bonds for sale. The Municipal Advisor can assist the Issuer in writing the RFP and in evaluating the proposals. Negotiated Bond issues allow the Underwriter to know several weeks in advance that it will have a specific product to sell. The Underwriter's sales and marketing force can then begin pre-marketing efforts and discussions with potential investors to determine how receptive the market is to the bond issue. The Issuer also has flexibility to adjust the maturities and coupons at the time of pricing so the structure best suits the Issuer's needs. At the time of the bond sale, pricing is agreed upon between the Issuer, the Municipal Advisor, and the Underwriter.

Conditions that favor a Negotiated Bond Sale include:

- The rating of the bonds is below "A" and credit enhancement is not available.
- The revenue stream backing the debt is weak, uncertain, or has little history.
- The Issuer has specific levy rate targets for a General Obligation Bond.
- The issue is a refunding which is close to savings thresholds.

- The structure of the bonds includes complex features requiring focused explanation to investors.
- Active litigation which could have a material adverse impact on the Issuer's finances.
- Policy considerations, such as Disadvantaged Business Enterprise (DBE) participation and regional firm participation that relate to syndicate membership and bond allocations, or targeting specific investors.

If a Negotiated Sale is to be used, Issuers should make sure that the process is equitable and defensible and keep thorough records throughout the selection process. Critics of Negotiated sales may argue they promote an open and fair process that is inherent to the Competitive bid method of sale. It is imperative that Issuers guard against any appearance of impropriety or abuse of the public trust and select Underwriters and other municipal finance players based on the merit of their qualifications and cost to the taxpayer.

If an Issuer decides to go through the negotiated sale process, there are additional steps to hiring an Underwriter and ensuring a transparent, equitable process:

- The Issuer may undergo an Underwriter selection process through a Request for Proposals (RFP), a Request for Qualifications (RFQ), or another form of solicitation, however, this process is not required under State procurement rules.
- Remain actively involved in each step of the negotiation and sale processes to uphold the public trust.
- Ensure that either an employee of the Issuer or an outside professional (other than the Underwriter), is familiar with, and abreast of, the conditions of the municipal market and is available to assist in structuring the issue, and pricing/monitoring of sales activity.
- The Underwriter and Municipal Advisor of a Negotiated sale are separate roles that are restricted from being performed by the same firm. Hire an Underwriter who offers an electronic online order monitoring platform for reviewing orders as they are entered during the order period, ensuring transparency.
- Request that financial professionals disclose the name or names of any person or firm (e.g. attorneys, lobbyists, and public relations professionals), compensated to promote the selection of the particular financial entities.
- Request all financial professionals submitting joint proposals or intending to enter into joint accounts or any fee-splitting arrangements in connection with a bond issue to fully disclose to the Issuer. This disclosure would include any plan or arrangements to share tasks, responsibilities, and fees earned as well as disclosing the financing professionals with whom the sharing is proposed, the method used to calculate the fees to be earned, and any changes thereto.

- If multiple underwriting firms are hired, review the Agreement Among Underwriters (AAU), and ensure that it governs all transactions during the underwriting period.

A Negotiated Bond Sale has many similar steps to a Competitive sale:

1. The Issuer hires outside professionals (usually a Bond Counsel, and Municipal Advisor and/or Underwriter) to review the nature of the project and help them determine the financing requirements.
2. The Issuer's governing body passes the needed authorizations to sell the bonds.
3. If the Issuer decides to hire an Underwriter through an RFP, the Municipal Advisor and Issuer will prepare a solicitation for Underwriters and distribute the solicitation to qualified firms. A selection should be made based on a preferred method of review of received proposals, and those proposals should include both the firm's experience and the fees they would charge.
4. The Issuer, with the assistance of the financing team, prepares a preliminary official statement (POS) which describes the Issuer, the credit structure, the finances, local economy and other items that may be important to potential bond investors.
5. The Underwriter, Bond Counsel, and Municipal Advisor work with the Issuer to prepare legal documents related to the transaction.
6. The Issuer, Municipal Advisor and/or Underwriter prepare a rating presentation of the credit highlights and schedule a conference call or meeting with the rating agency.
7. The Underwriter arranges for the dissemination of the POS to potential investors.
8. In the weeks leading up to the sale, the Underwriter discusses the bonds with investors and determines, in consultation with investors, the rates and structure that will result in sufficient investor interest to sell all of the bonds. Issuers and their Municipal Advisor should ensure that the preliminary official statement is distributed to a wide array of potential investors, not just to the Underwriter's internal sales force. At the time of pricing, the Underwriter takes orders for the bonds and adjusts the interest rates based on actual orders, to optimize the sale.

## Private Placements

A [Private Placement](#) is a special type of Negotiated Sale in which the Issuer sells bonds directly to the investor. The investor is often a bank but may be another type of sophisticated investor. The Issuer either directly contacts a bank or prepares a term sheet, which is circulated to a limited group of banks. A Placement Agent (usually the same firm serving as Underwriter) may perform these duties on behalf of the Issuer, but a Municipal Advisor may **not** provide a list of potential banks or negotiate on behalf of the Issuer in a Private Placement. The Issuer generally specifies the preferred terms of the loan and the

bank responds with conditions and terms that it can offer. The transaction does not generally include disclosure documents (such as the Official Statement) and is generally limited to a loan document prepared by either the bank's counsel or Bond Counsel. The Private Placement can be a cost effective means of financing because issuance costs are lower than the costs of issuing publicly-offered bonds. Therefore, short transactions or small transactions can bear a slightly higher interest rate and still have an overall lower effective borrowing cost. A Private Placement may also offer the benefits of a shorter time to closing, less staff time required and the bank may extend more flexible call provisions or other financing terms compared to a public offering. Riskier securities, such as urban renewal, may not have access to the public market so a Private Placement may be the only option.

A Private Placement generally follows the following steps:

1. The Issuer determines financing needs.
2. The Issuer discusses financing options with a Municipal Advisor or Underwriter/Placement Agent to determine that a Private Placement is the best fit for the financing.
3. The Issuer, Municipal Advisor and/or Placement Agent prepare a proposed term sheet to describe the transaction and circulate to banks.
4. The Issuer contacts their bank or compiles a list of banks, or the Placement Agent solicits proposals from banks.
5. The Issuer, Municipal Advisor and/or Placement Agent review proposals and selects the bank.
6. The Bond Counsel and Municipal Advisor prepare authorizing documents for the financing, which the Issuer's governing body approves.
7. Bond Counsel (usually) or the bank's counsel prepares the loan documents.
8. Issuers should voluntarily disclose the details of Private Placements or bank loans on EMMA, especially if the security is on parity with outstanding publicly sold debt of the Issuer.

## **Governmental Agency Direct Loans**

There are a number of direct lending programs at State agencies and through the USDA. These include programs for clean water, wastewater, highways, and general governmental infrastructure. The availability of funds and the timing of funds vary greatly from program to program and from year to year. Issuers may contact [Oregon Department of Environmental Quality \(DEQ\)](#), [Business Oregon](#), or [Oregon Department of Transportation \(ODOT\)](#) and/or [United States Department of Agriculture \(USDA\)](#) to inquire about these programs. These programs often make funds available at lower costs (often for longer

terms than market-based transactions), may offer longer maturities and more flexible call provisions.

When amendments to SEC Rule 15c2-12 take effect February 27, 2019, issuers of new municipal bonds may be required to agree to disclose to investors significant information about the incurrence of bank loans and similar borrowings, as well as events reflecting financial difficulties related to its existing financial obligations. The new disclosure requirements will apply if a municipality issues a bond on or after February 27, 2019, for which it enters into a new continuing disclosure agreement.

## STEP 6: PREPARING FOR A BOND SALE

### Planning

Each bond sale needs a plan of finance. The key considerations, which your finance team can help you with, are:

- **Size** – How much does the Issuer<sup>1</sup> need or can afford to borrow? This involves an analysis of project costs, a schedule of expected expenditures, and the costs of selling bonds that will be capitalized as part of the bond sale.
- **Timing** – When does the Issuer need the money? This involves the spending schedule but focuses on how long the Issuer might take to spend the proceeds. The IRS limits the earnings on bond proceeds and the Issuer will need to work with Tax Counsel to ensure compliance with federal rules. Further, from a policy standpoint, trying to time the market is not generally considered the best approach to project funding but rather to time the sale of bonds in accordance with when the funds are needed.
- **Security** – What will be pledged to repay the bonds? The bonds, unless they are supported by a new property tax levy, will need a repayment source from existing and future revenues. In addition, some bond issues have one source of intended payment but are secured by additional sources to improve the credit worthiness and marketability of the bonds.
- **Repayment Structure** – How long will it take to repay the bonds? Municipal bonds are most often structured to pay interest twice a year and principal once a year. The Issuer needs to examine the timing of the revenue source that will be used to repay the bonds to match up the repayment structure with the revenue structure.
- **Method of Sale** – How will the bonds be sold? See “[Method of Sale](#)” for a discussion of the various considerations and methods for selling bonds.

### Developing Bond Documents

A bond is a special type of loan and as such, a set of legal documents must be developed to formalize the details of the loan between the investors and the Issuer. The major legal documents are prepared by Bond Counsel. These take various forms: bond declarations, loan agreements, trust indentures, and bond resolutions are all forms of basic bond documents. The specific type of document depends on the type of bond the Issuer is selling and the types of promises (pledges) being made. Since these documents form the agreement between the investors and the Issuer, and since the details of these documents establish legal underpinnings of the bonds, it is important that the Issuer seek outside

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<sup>1</sup> The term “Issuer” is a general reference to issuing districts, municipalities, and local governments.



counsel in determining the best options. The documents are a balance between giving adequate security to bond investors while preserving operating flexibility on the part of the Issuer. Bond documents should be developed in conjunction with the Issuer's Bond Counsel and Municipal Advisor. If the sale is Negotiated, the Underwriter should be involved as well, but it is important to remember that Underwriters are tasked with selling bonds to investors and therefore may have a bias towards increased investor security.

## **Official Statements**

Prior to the sale, it is referred to as the [Preliminary Official Statement](#) (POS) and is the primary source of information for Underwriters, investors, and rating agencies in evaluating the value and creditworthiness of the bonds and the Issuer. The POS is used to introduce and develop primary purchase commitments prior to the sale or marketing of the bonds. The POS is regulated per Securities and Exchange Commission (SEC) Rule [§240.15c2-12 Municipal Securities Disclosure](#) and must be deemed final prior to distributing to investors. After the sale, the POS is updated with pricing information, including: the sale price, bond rating, final maturity schedule, and interest rates determined at the sale closing. This updated document is then published as the Final OS, or prospectus, for the bond issue.

The various sections of the Preliminary and Final Official Statements are prepared by the Issuer, Bond Counsel, Municipal Advisor, and Underwriter. These documents typically include general sections concerning the municipality or local government, its economy, fiscal condition, financial structure, revenue sources, revenue data, debt authority, and any outstanding litigation. The OS also includes sections which describe:

- The issuing entity,
- The project to be financed,
- Financial information concerning the Issuer,
- Specific details of the issue (including term and interest payment structure, as well as revenue sources which may be used to repay bonds), and
- The Bond Counsel's opinion as to the tax-exempt status of the bonds.

While several organizations may contribute to the preparation of the OS, the Issuer needs to recognize that the OS is the Issuer's document and therefore it is the Issuer's responsibility to ensure that the OS contains all material information needed to comply with federal and state requirements.

Official Statements (OS) from bond sales are available at no cost at the [Municipal Securities Rulemaking Board's](#) EMMA website. Also, MDAC staff is available for any questions at the [Debt Management Division](#) of the Office of the State Treasurer.

## Credit Ratings

One of the most important factors determining the interest rate paid on bonds is the perceived quality of the Issuer's credit. This perception is most often based on its rating by one or more of the national ratings firms. The significance of bond ratings on the cost of borrowing is substantial. Consequently, Issuers that improve their ratings can reduce their borrowing costs.

There are three main firms that rate municipal bonds: [Fitch Ratings](#), [Moody's Investors Service](#), [S&P Global Corporation](#) Other organizations (i.e., [Kroll Bond Rating Agency](#)) rate municipal bonds but have not gained the widespread acceptance of these firms. Bonds are rated for a fee that is charged when the bonds are sold. There is generally no charge to maintain a rating over the life of an issue; however, industry standards may change. The Issuer should keep the agency apprised of financial circumstances. The rating is a measure of quality and credit risk and is reviewed periodically by the rating agency as long as bonds are outstanding.

A rating agency generally requires about three weeks between receipt of documents and issuing a rating. The Municipal Advisor or Underwriter will initiate contact with the rating agency and provide analysts with the necessary documentation.

The need for a rating or multiple ratings on an issue depends on a variety of factors, including:

- The size of the offering.
- Whether or not the Issue has outstanding rated issues of the same security.
- The perceived market for the bonds.
- The likelihood that an investment grade rating can be obtained. The Issuer may consider the potential purchasers in making a determination to obtain a rating.
- Whether the issue will carry credit enhancement.

The rating agency may contact the Issuer for updated information to issue a surveillance rating and the Issuer is required to provide the annual audit to the agency. When an issuer applies for and uses the rating assigned to a bond issue by a rating agency, the Issuer effectively contracts to provide the agency with the information (e.g. annual financial statements) necessary to maintain or keep the rating up to date. The rating agency has the option of confirming the existing rating, upgrading the rating, or downgrading the rating - depending on the changing financial status of the Issuer. The bond rating is an assessment of credit quality that remains important throughout the life of the issue. It is shortsighted to pay attention to the rating only at the time of a bond sale because the interest of traders and bondholders in credit quality remains as long as bonds are outstanding.

Many investors will only buy rated bonds because such securities carry an independent evaluation of credit quality. Others are required by law to hold only rated bonds. If the municipality fails to provide the rating agencies with the information required to keep this quality assessment current, the rating is withdrawn and the bondholder is left with an investment of indeterminate quality. A rating withdrawal can have a negative impact on the resale or trade value of a bond. For this reason, investors and traders have a strong interest in the maintenance of ratings. When ratings are withdrawn due to inadequate information, Underwriters will note this as a lack of sound debt management practices when the Issuer next enters the market, which often results in higher interest costs in the future. Accordingly, Issuers should give careful thought to the matter of whether or not a rating should be requested for the current bond issue.

Even if a new offering is rated, bidders are likely to view this rating with some skepticism if the Issuer has demonstrated a lack of concern regarding the maintenance of previous ratings. Management of municipal finance is an ongoing process and each decision or policy affects investors' overall view of management quality.

Many segments of the market are trying to standardize municipal financial reporting. It is recommended that reports be consistent with Generally Accepted Accounting Principles (GAAP) for governmental units.

## **Rating Criteria Overview**

The rating agency is primarily interested in the strength of the security pledged to the repayment of debt. The lower the amount of debt in relation to the resources pledged to repayment normally results in a higher rating. Many factors that enter into the rating may be beyond the Issuer's immediate control, such as the state of the local economy. However, Issuers can influence factors that may enhance credit quality.

### *General Obligation Bonds*

Four principal factors are evaluated in order to rate a GO bond:

#### **1. Debt**

- Debt burden
- Debt history and trends
- Debt policy
- Debt as a percentage of current budget revenues
- Future borrowing plans

Burden is expressed as net direct and overall (or overlapping) debt per capita and net direct and overall debt as a percent of estimated full value of property within the municipality's boundaries.

## 2. **Financial**

- Fiscal performance
- Budgetary control
- Revenue adequacy and diversity
- Financial administration
- Historical trends

## 3. **Economy**

- Natural resources and population
- Income
- Employment
- Industrial diversification
- Economic structure and amount of capital
- Economic performance and prospects

## 4. **Administration or Management**

- Organization
- Services
- Performance
- Policies

### *Revenue or Limited-Liability Bonds*

Rating analysis for Revenue or Revenue-supported Bonds is similar to that of GO bonds. The focus shifts from the taxing power of the entity to the earning power of the project. The following principal factors are evaluated to rate a Revenue Bond:

#### 1. **Legal Protection**

Legal protection for the bondholders and the governmental entity is outlined in the bond indenture. The bond indenture authorizes the bond issuance, defines the bondholder's security, the Issuer's responsibilities, and provides the rate covenant.

2. **Project Essentiality.** A key factor in rating Revenue Bonds is the essentiality of the project for the which the bonds are being sold. Water and sewer Revenue Bonds, for example, are considered highly essential since most property owners cannot easily avoid incurring and paying for utility services. In contrast, the use of enterprises such as parking garages, entertainment venues, golf system and other enterprises are largely at the discretion of the public and the demand for such services is often uncertain.

3. **Demand-Creating Potential**

Demand-creating potential includes basic economic trends and trends relating to the specific revenues pledged. Providing feasibility studies or management projections are helpful in the evaluation process.

3. **Administration or Management**

Administrative or management of a municipality is evaluated on the basis of organization, services, performance, and policies.

4. **Finances**

Key factors analyzed for the finances of an entity are: debt service coverage, stability, balance sheets, liquidity, future financing needs, and projected operations.

## **Information Requirements**

To perform a rating review, historically the rating agencies require the following general information. To establish what information is required for your specific bond issue, contact the rating agencies and/or enlist the help of your bond professionals.

### *General Obligation Bond Issues*

- Preliminary Official Statement
- Audit reports/audits from the past three years
- Latest operating budget
- Capital budget or planning document
- Authorizing resolution or ordinance
- All legal documents relative to security debt

### *May also request:*

- Description of the economy
- Last five years' assessed valuation
- Building permit activity
- List of ten largest taxpayers
- Current population estimate
- Last five years' tax rates, levies, current and total collections
- Pending litigation

### *Revenue or Limited-Liability Bonds*

- Bond security covenants
- Ten-year trend of receipts
- Any engineering report on feasibility and construction
- Economic data related to specific purpose of financing

- Nature and term of lease obligations
- Trust indenture or bond resolution
- Nature and term of lease obligations
- Any engineering report on feasibility and construction
- Any lease agreement applicable

## Credit Evaluation

Credit evaluation is both an objective and subjective exercise. Because of this, rating recommendations undergo an internal rating committee review process. A consensus is required before the proposed rating is assigned.

## Ratings and the Bond Market

[Moody's](#) ratings, beginning with the highest, are: Aaa, Aa, A, Baa, Ba, B, Caa, Ca, C and, CON for a conditional rating. Bonds in the Aa, A, Baa, Ba and B groups are further broken down into sub-ratings of 1, 2 or 3. For example: Aa1, Aa2 or Aa3, with Aa1 representing the rating that Moody's believes possesses the strongest investment attributes within that group.

[S&P Global](#) ratings, beginning with the highest, are: AAA, AA, A, BBB, BB, B, CCC, CC, C and D for bonds in default. Ratings from AA to BB may be modified by the addition of a (+) plus or (-) minus sign to show relative standing within the major rating categories.

[Fitch Ratings](#) are: AAA, AA, A, BBB, BB, B, CCC, CC, C. DDD, DD and D are used for bonds in default. Ratings from AA to BB may be modified by the addition of a (+) plus or (-) minus sign to show relative standing within the major rating categories.

The ratings of the three main agencies are roughly comparable, from Aaa/AAA to C/C. Ratings of Baa and BBB are the lowest acceptable rating for bonds to be considered of investment grade and therefore of interest to institutional buyers.

Investors use bond ratings for various purposes. Large institutional investors may do their own credit research to supplement the rating agency evaluations. Ratings may be used as a screening mechanism to narrow a list of potential investment choices.

A municipality may want to follow the [secondary market](#) trends of bonds to compare the performance of their own bonds to others of similar credit quality. The bond rating, in addition to a variety of other factors, has a direct bearing on the interest rate paid by an Issuer.

As a matter of policy, some Issuers also limit the sales of bonds that do not carry an investment grade rating to special classes of investors, known as Qualified Institutional Buyers or Accredited Investors.

## **Credit Enhancements**

Enhancing the creditworthiness of a bond issue by shifting credit-related risks to a third party through the use of bond insurance can be a means of lowering borrowing costs. There are several nationwide firms that offer bond insurance. Bond insurance is used to guarantee payment of the entire principal and interest of the issue or, in some cases, specific maturities within an issue. Such insurance may not be necessary and may not reduce overall borrowing costs after the insurance premiums are factored in. Bond insurance is not always desirable or available, but may be suitable and may lower borrowing costs in some cases. Prior to 2008, common beliefs were that bond insurers would keep their AAA ratings forever. In 2008, that perception changed as all bond insurers suffered significant downgrades. As of 2017, two AA rated bond insurers are writing new insurance policies and may be a viable option for lower rated bond issues.

## **Structuring**

When determining the maturity schedule for a bond issue, it is important to match bond and interest payment dates to the available cash flow. If the bonds are self-supporting, the bond principal repayment dates should be scheduled to coincide with revenue collections. If the bonds are dependent on tax collections, payment dates should be matched to the timing of the receipt of property taxes by the issuer. Municipalities that fail to make this match have had to issue short-term debt repeatedly to meet temporary cash flow deficits that could have been avoided by selection of the appropriate maturity schedule. In Oregon, many general obligations bonds are structured with December 15 (interest only) and June 15 (principal and interest) payment dates to coincide with the large annual tax turnover in late November.

After matching bond issue debt service to available cash flow, a second factor to consider in designing a maturity schedule is overall cash flow. Decide how the new debt service schedule will impact the existing maturity schedules. Project future borrowing needs as defined in the capital improvement plan. Make sure the new maturity schedule has been optimally designed for the issuer's cash flow capacity.

Maturity schedules can be designed either to result in roughly equal annual debt payments, to "wrap around" existing debt service to result in a combined level debt schedule, or to otherwise fit an issuer's desired repayment structure. Issuers should be aware that

ascending debt service schedule (achieved by deferring principal repayment) may be viewed negatively by the rating agencies and investors.

Most municipal bonds are structured with [serial bonds](#) – bonds that mature each year and are structured with different coupons and yield related to the length of the maturity. Generally, bond yields rise as maturities lengthen due to the increased risk in a concept known as the “yield curve”. Bond issues may also be structured as [term bonds](#). In the instance of term bonds, the entire principal of the term bond is paid at a single coupon and yield and priced to the final maturity date. With term bonds, Issuers are usually required to make annual mandatory redemptions to smooth out payments.

In general, longer bonds will pay a higher yield because of greater risk to the investor (positive yield curve). Most GO bonds are structured with final maturities of one to twenty years.

Debt instruments may be issued using any of the following interest payment formats or combination of formats:

- Be paid at regular intervals at a defined coupon rate.
- Be deferred until the principal matures (zero coupon bond).
- Be set at a fixed interest rate for the term of the obligation.
- Vary with a specified market interest rate (variable/floating rate).

Call options allow bond Issuers to redeem or refund securities prior to their stated maturity. Most government Issuers choose to issue long-term, fixed coupon debt knowing that a ceiling has been placed on future debt service outlays. However, Issuers also prefer to have the ability to refinance their debt if interest rates fall. The call option permits Issuers this flexibility. Bonds issued without a call option may not be refinanced for the purpose of realizing debt service savings.

Credit factors may also contribute to the decision to sell callable bonds. If an Issuer’s credit position improves; a call provision would allow refunding at a later date in a more favorable environment. On the other hand, if conditions worsen, the Issuer is not compelled to call bonds at the optional date.

Issuing refunding bonds incurs additional cost, but the savings quoted will be net of all issuance costs. Current Oregon laws do not require a vote on a refunding issue, though other normal bond issuing and administrative costs remain. A need or desire for financial flexibility should provide the principal justification in determining whether a call feature is to be included. The technical aspects of a call feature include:

- The amount of premium (if any), to be paid.
- The number of years before the call.
- The order in which the bonds are to be called.



A typical call option for municipal bonds provides that the bonds may be called after approximately ten years at a price of par (100% of face value). It is unusual for Issuers to have pay a redemption premium unless they are seeking to redeem the bonds sooner than ten years from the date issuance.

Regardless of the fact that [coupon bonds](#) are no longer issued, the interest rate on any bond is still referred to as its coupon rate. Issuers may set the conditions for coupon rates bid by purchasers. Typical restrictions include:

- Requiring the same coupon rate for all bonds in a single maturity.
- Requiring coupon rates in multiples of one thousandth of one percent (0.001%).
- Requiring that coupon rates on maturities after the call date to be in increasing (non-descending) order.

Fewer restrictions on coupon rates may encourage more bidders. The advantages of rate restrictions to an Issuer must be balanced against the potential consequences of such restrictions. Consequences could include higher interest costs, but this is not normally the case if the restrictions are familiar to the bond community. The restrictions cited above rarely demand a premium for their imposition. Issuers should work closely with their Municipal Advisor to determine the couponing restrictions most likely to achieve the Issuer's financing goals.

Oregon municipalities may establish their own maximum interest rate which is generally calculated using the [True Interest Cost](#) (TIC) computation for determining an overall average interest rate. The TIC method is that TIC considers the time value of money involving a present value calculation and gives a true picture of the cost involved.

## **Sale Date**

Although market conditions are difficult to predict, timing of a bond sale is very important. In periods of high interest rates, Issuers may postpone construction of a project or use interim financing arrangements. When rates are lower, Issuers with bond issues outstanding which have call provisions may issue Advance Refunding or Current Refunding bonds to refinance higher interest rate debt.

In addition, short-term considerations, such as the day-to-day schedule of other bond sales, are important. In general, bond sales are most successfully scheduled mid-week rather than on Mondays or Fridays. Interest rates are most unpredictable (most volatile) just before and after holiday periods and long weekends. Furthermore, when an issue is sold to a bank or syndicate, the bonds are usually re-offered the same day or the next.

Issuers should try to avoid periods of unsettled monetary or bond market conditions and should avoid large competitors (other bond sales of similar security, tax status, credit and structure), which will weaken the demand for bonds. Issuers can use the [Oregon Bond Calendar](#) to assist in scheduling their bond sale.

Choosing a sale time involves planning. When choosing the time of day for accepting bids on Competitive sales of bonds, Issuers should make sure that they are in a position to award the bonds to the winning bidder shortly after the winning bid has been established. The time at which bids are to be awarded may also need to be coordinated with a special board or council meeting. Alternatively, the governing body may choose to delegate the award of the bonds to its finance director or other senior finance official, eliminating the need for a special board meeting.

## Required Filings

State and municipality bond sales are reported to the Municipal Debt Advisory Commission (MDAC). Sales not reported to the MDAC consistent with [ORS 287A.640](#) and [OAR 170-61-0000](#) will be in non-compliance with the law. Bond professionals in Oregon are aware of this provision of the statute and should assist their client municipalities in meeting this requirement. Issuers should also forward a copy of their final official statement for the bond issue within seven (7) days of a bond sale. (See [OAR 170-61-0000](#), Notice and Reporting Requirements by Public Bodies When Issuing Bonds.)

### *MDAC Form 1 (Bond Sale Notice)*

In accordance with [OAR 170-61-0000](#), all local governments, municipalities and agencies are required to notify the Commission of all bond sales. Official notice is accomplished by filing a Bond Sale Notice (MDAC Form 1) with the Commission. This is usually submitted by bond professionals through the use of the Bond Tracker system managed by the [Debt Management Division Municipal Debt Advisory Commission](#) services of the Office of the State Treasurer.

The notice of the bond sale must be submitted not less than 10 days preceding the bond marketing date ([ORS 287A.640](#) and [OAR 170-61-0000](#)). It must include preliminary bond sale information such as:

- The issuing entity and address
- Type of bond
- Anticipated bond marketing (sale) date
- Bond par amount
- Project or purpose of the bond issue
- Source of revenues used to repay the bonds
- Anticipated closing date
- Bond Counsel

- Municipal advisor (if applicable)
- Underwriter (if sale is Negotiated)
- Bond issuance costs (if available)
- Other summary information identified on MDAC Form 1

The Commission will provide the public body and appropriate Bond Counsel a letter verifying receipt. The letter will indicate whether the bond sale is in compliance or non-compliance with [OAR 170-61-0000](#). Postponed or changed bond sales require submission of an updated MDAC Form 1 to the Commission as soon as the new information is available. Postponed or changed bond sales do not require another copy of the preliminary official statement unless a new printing occurs.

#### *MDAC Form 2 (Bond Sale Result)*

Public entities issuing bonds will also report all bond sale results to the Commission by filing a Bond Sale Result document (MDAC Form 2). The form must be submitted not later than seven days after the bond marketing date. The form is usually submitted by bond professionals through the use of the Bond Tracker system managed by the [Debt Management Division Municipal Debt Advisory Commission](#) services. The public body and its Bond Counsel will receive written notice of non-compliance if sale results are not reported.

## **Distribution of NOS & POS**

In order to ensure compliance with the legal requirements, Bond Counsel normally prepares the Notice of Sale. New bond sales are now advertised nationally using a variety of means. Some jurisdictions still require advertising in local press while state law now allows for bypassing local printed press and using national electronic media services. Most advisors believe this second method reaches all prospective bidders in a Competitive sale.

The Notice of Sale (NOS) is the official offer to sell the bonds and provides the official description of the security and the bidding process. It also directs the interested bidders to the POS for a full discussion of the security and information provided by the Issuer related to the bond sale.

Most Issuers now use one or more electronic media networks to provide the notice of the bond sale to potential investors and to distribute the Preliminary Official Statement (POS). Additionally, Issuers may publicize sales by distributing POSs directly to banks and investment banking firms.

## Bond Registration

In the past, municipal bonds could be issued in either coupon or registered form. However, federal legislation passed by Congress on August 20, 1982 -- the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requires all bonds of one year or longer duration sold after June 30, 1983 be issued in registered form. Accordingly, it is no longer legal to issue bearer bonds for issues of one year or longer duration.

### *Registered Bonds*

Registered bonds have a recorded ownership and must be re-registered to the new owner each time they are sold or transferred. Such bonds do not have coupons and may be registered in denominations substantially larger than \$5,000. A Paying Agent, which is usually a financial institution, automatically sends interest payments to the owners.

### *Book-Entry Only Registered Bonds*

Book-Entry Only registered bonds are recorded ownership bonds which are not available in physical form. Such bonds are held by a securities depository and recorded by computer or other permanent means for the benefit of the bond owner. No individual certificates are issued, but all other features of a Registered Bond cited above remain. The main advantage of this type of bond is reduced issuance expense for the issuer. Book-Entry Bonds are generally registered through [DTC](#).

### *Responsibilities of the Registrar*

Responsibilities of the [Registrar](#) include registration of bonds at the time of issuance (i.e. following a sale) and transfer of bonds during the life of the issue. The Registrar is usually a bank or other financial institution; however, the Issuer, in some cases, may choose to assume the responsibility. Selection of a Registrar should be based upon an assessment of the market of an Issuer's bonds. The Registrar should be located as close as possible to the primary market for an Issuer's bonds and should guarantee prompt transfer of ownership.

Performance standards must be met by transfer agents (Registrars) in order to comply with the Securities and Exchange Commission rulings.

Issuers may, from time to time, solicit proposals for Paying Agents. The MDAC maintains a list of qualified banks that provide these services.

The following costs and fees may be borne by the Issuer issuing bonds:

- Underwriter's fee/discount/spread
- Bond Counsel fee
- Municipal Advisor fee

- Rating fees
- Credit enhancement fees
- Official Statement cost
- Bond printing cost
- Out-of-pocket costs such as travel, financial data preparation, etc.
- Other costs such as [Blue-Sky](#) search fees (i.e. state securities law), Paying Agent/Registrar, Underwriter's Counsel fee, and Trustee fee
- MDAC fee

For Refundings:

- State advance refunding fees
- Escrow verification
- Escrow Trustee

## Closing

The closing date is the date on which the bonds (in electronic form) are exchanged for payment from the bond Underwriter.

The amount due at closing is equal to the principal amount, plus the original issue premium or less the original issue discount, if any, less the Underwriter's discount, less the amount of the good faith deposit. The bonds are delivered to the purchaser on receipt of the closing amount, usually in federal funds or other guaranteed funds. The bond issue does not become a debt of the Issuer until the completion of the bond closing.

Often, proceeds from the bond sale are not spent immediately and are held until needed for the project. The Internal Revenue Code strictly regulates the investment of bond proceeds. Subject to [ORS 294.040 and 294.135-294.155](#), the bond proceeds custodial officer may, after having obtained a written order from the governing body which is in the governing body's minutes or journal, invest any sinking fund, bond fund or surplus of funds in his/her custody in any approved investments. (Reference [ORS 294.035](#).)

## TYPES OF DEBT REPORTS AND FORMS

Debt records should be kept for each debt issue. A complete transcript for each issue is normally provided by Bond Counsel to the Issuer<sup>1</sup> shortly after the bond closing. The transcript includes the necessary documents required for administering and accounting for the debt issue. Documents containing information which will be regularly used over the life of the issue are:

- Schedules of future debt service,
- Paying Agent/Registrar data,
- Tax Certificate, and the
- Escrow agreement (typically for advance refundings).

While the Paying Agent is required to provide an invoice to the Issuer prior to a debt service payment date pursuant to the paying agent agreement, it is the Issuer's responsibility to ensure that accurate and timely payment is made to the Paying Agent according to the bond documents. Sometimes payments are required to be made well in advance of the payment date due to requirements of credit enhancers such as bond insurers, the State of Oregon [School Bond Guaranty Program](#), or bond covenants.

For each debt issue, records are required for:

1. Efficient administration during the period the debt is outstanding,
2. External financial reporting purposes, and
3. Budgeting purposes.

## DEBT ACCOUNTING & REPORTING

### ***Bond Accounting***

When bonds are issued for general government purposes, the proceeds are recorded in governmental funds. This may be in the general fund, a special revenue fund or, if the debt is to be used for capital construction, a capital projects fund. The obligation for the debt is recorded separately from the governmental type funds for reporting purposes. When debt is issued for proprietary funds, both the proceeds and the obligation for the debt are recorded in the fund itself.

The face amount of debt, Underwriter's discount, original issue discount and premium, and cost of issuance must all be separately recorded in the accounting records. It is not appropriate to record only the net amount of cash received.

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<sup>1</sup> The term "Issuer" is a general reference to issuing districts, municipalities, and local governments.

The official bond documents for Revenue Bonds and certain other types of debt may require that the government establish a debt service reserve fund, which provide a financial cushion for any periods in which net revenues are not sufficient to pay debt service on the bonds. If such funds are not drawn upon previously, they may be used for the payment of debt service near the end of the life of the issue. Those reserves generally will be held in a separate fund. Direct recording of the proceeds or intrafund transfers are used to record the required reserve amount from the fund holding the proceeds into the fund where the reserve will be held.

Deferred costs such as issuance costs and Underwriter's discounts are amortized over the life of the debt issue using a systematic and rational method. Original issue premium and discounts are also amortized. Amortization is recorded in the proprietary fund for proprietary fund obligations. Amortization of original premiums and discounts for general government debt should be calculated and reported in the government-wide governmental activities statements.

At year end, an accrual for interest payable must be recorded. This interest payable is equal to the amount of interest attributable to the period involved. The accrual is made in the proprietary fund or as an adjustment to the government-wide governmental activities statements, depending on what fund type the liability is related. Interest payable is not accrued in governmental funds **unless** cash has been transferred to a debt service fund for payment of principal or interest just after the end of the fiscal year. Because the cash would then be a current resource available in the debt service fund for payment of principal and interest immediately after the fiscal year end, it is appropriate to also accrue the payable against that cash. This prevents an overstatement of current resources available for expenditure in the next period. If this accrual is made in a governmental fund, no accrual is required in the government-wide reporting fund.

### ***Bond Financial Statement Reporting***

In the governmental fund financial statements, bond proceeds are reported as an other financing source. Expenditures related to bond issuance are reported as an other debt service expenditures. In the proprietary fund financial statements, bond proceeds and principal payments are never reported in the income statement/statement of changes in net assets.

For the government-wide financial statements, governmental funds are adjusted to reflect debt transactions for the reporting period. Governmental activities statements will not report proceeds and principal payments (after adjustments). For financial reporting purposes, the principal due within one year is reported separately from the long-term debt.

Governments must include required long-term debt disclosures in the notes to their financial statements. (Reference [Step 8: Securities Law Disclosure for Municipal Securities](#).) Relevant disclosures at year end include:

- A description of the types of long-term debt authorized to be issued.
- Schedules showing the changes in outstanding debt for each type of long-term debt for both governmental and business-type activities.

- Schedules of future debt service requirements (principal and interest displayed separately) for each type of long-term debt for both governmental and business-type activities.
- Terms and interest rates associated with variable-rate debt.
- Amounts of long-term debt due within one year of the date of the financial statements.
- Specific information related to demand bonds.

## **DEBT REFUNDING & ADVANCE REFUNDING**

### ***General Information***

Debt refundings involve the issuance of new debt (refunding bonds) whose proceeds are used to repay previously issued debt (refunded bonds). The refunding bond proceeds may be used to repay the refunded debt immediately (a Current Refunding), or may be placed with an Escrow Agent and invested until they are used to pay principal and interest on the refunded debt at a future time (an Advance Refunding). Most Advance Refundings result in defeasance of debt.

Defeasance of debt can be either legal or in-substance. A *legal defeasance* occurs when debt is legally satisfied based on certain provisions in the bond documents for the refunded debt even though the debt is not actually paid. An *in-substance defeasance* occurs when debt is considered defeased for accounting and financial reporting purposes even though a legal defeasance has not occurred. When debt is defeased, it is no longer reported as a liability in the accounting records; only the new debt is reported as a liability.

Debt is considered defeased in-substance for accounting and financial reporting purposes when:

- Assets are placed in irrevocable escrow to be used solely for the purpose of making payments of principal and interest on the refunded debt.
- The possibility that the Issuer or Obligor will be required to make future payments on that debt is remote.
- The assets in the escrow account are essentially risk-free as to amount, timing, and collection of interest and principal.
- The timing of collections approximately coincides with the timing and amount of scheduled principal and interest payments on the refunded debt.

### ***Accounting for Refunding of General Government Debt***

When accounting for a refunding of general government debt, the proceeds of the new debt and the payment of funds into escrow for the old debt are reported in the governmental fund. The debt itself is reported in the government-wide reporting fund. The amounts issued for Refunding (new) debt are reported as another financing source and those same amounts, when used to refund old debt, are reported as another financing use. Resources used from sources other than refunding debt are reported as debt service expenditures. In addition, premiums and discounts are



reported gross as either another financing source or other financing use, respectively. Issuance costs are reported as expenditures of the governmental fund.

Proceeds from refunding debt that are paid to the Escrow Agent and used to refund the old debt should be reported as an other financing use, even if the actual payment went directly from the counter party to the Escrow Agent. If the government uses funds from sources other than the refunding debt proceeds, such as a bond sinking fund, the payment should be charged to debt service expenditures rather than other financing uses.

The new debt liability is recorded in the government-wide reporting fund. The bonds in the government-wide reporting fund should be recorded at face value unless they are zero coupon or deep discount bonds.

In addition to recording the new debt, the government must remove the old debt from the accounting records. That includes any deferred charges, Underwriter's discounts, and discounts/premiums related to the old debt. The deferred gain or loss on the refunding must also be reported in the governmental activities statements. This is the difference between the reacquisition price and the net carrying amount.

Deferred charges, discounts/premiums, and Underwriter's discounts are amortized, as they would be for any other debt issue. The deferred loss/gain should be amortized over the shorter of the life of the new debt or the remaining life of the old debt. All balances should be amortized using a systematic and rational methodology.

#### ***Accounting for Refunding Debt in Proprietary Funds***

Refunding debt transactions are recorded in proprietary funds using the same methodology as governmental funds. Other financing sources and uses are not reported in the GAAP financial statements for proprietary funds.

#### ***Financial Statement Reporting of Refunded Debt***

A general description of debt refunding transactions must be included in the notes to the financial statements. In the year of the refunding, disclosures must include the difference between the cash flows required to service the old debt and the cash flows required to service the new debt. When measuring the difference between the two cash flows, additional cash used to complete the refunding (e.g., for issuance costs or payments to the Escrow Agent) paid from resources other than proceeds of the new debt should be added to the new debt cash flows. Accrued interest received at the bond issuance date should be excluded from the new debt cash flows. The economic gain or loss resulting from the transaction must also be disclosed. Economic gain or loss is the difference between the present value of the old debt service requirements and the present value of the new debt service requirements, discounted at the effective interest rate and adjusted for additional cash paid.

Although the liability for refunded bonds is no longer reported on the face of the financial statements, the amount of in-substance defeased debt must be disclosed in the notes to the financial statements until it is fully paid by the Escrow Agent. The amount of defeased debt is listed

separately to distinguish between governmental activities, business-type activities, and fiduciary fund activity.

## **ADDITIONAL ACCOUNTING & REPORTING RESOURCES**

Governments accounting and reporting for bond activity should ensure that staff has access to the following resources:

- [\*Governmental Accounting, Auditing, and Financial Reporting\*](#) (often referred to as "The Blue Book"), published by the Government Finance Officers Association.
- Governmental Accounting Standards Board (GASB) codification, original pronouncements, and implementation guides. Hard copy or electronic versions of these documents can be obtained from GASB at <http://gasb.org/>.
- The [\*State and Local Governments – Audit and Accounting Guide\*](#), published by the American Institute of Certified Public Accountants.

## **MAINTENANCE OF RATINGS DURING LIFE OF THE ISSUE**

For Issuers of bonds that are rated by one or more rating agencies, it is important that the Issuer keep each rating current by supplying information to the appropriate rating agencies on a regular or yearly basis to avoid a possible rating withdrawal. This, in turn, could reduce marketability for the Issuer's outstanding bonds.

A withdrawal due to inadequate information will negatively affect investors' opinions about management of the Issuer and will impair future desirability of the Issuer's bonds. It is a disservice to taxpayers and also to bondholders to allow the flow of information to rating agencies to deteriorate between bond sales.

Rating maintenance generally consists of forwarding annual reports and updated debt and economic information to the agencies. Rating maintenance may also require responding to rating agency questionnaires. It is especially important to make special contact whenever an unusual financial or economic event occurs which affects the Issuer.

## **NOTICE OF EARLY REDEMPTION**

The majority of bonds issued today are held in a book-entry only system (the Book Entry System), where the registered owner of all of the bonds will be The Depository Trust Company (DTC), New York, and the bonds will be registered in the name of Cede & Co., as nominee for DTC. The Issuer enters into a Blanket Issuer Letter of Representations (the Letter) wherein the Issuer represents that it will comply with the requirements stated in DTC's Operational Arrangements as they may be amended from time to time.

The Issuer and the Registrar may treat DTC (or its nominee) as the sole and exclusive registered owner of the bonds registered in its name for the purposes of:

- Payment of the principal, redemption price, premium (if any), and interest on the bonds;
- Selecting the bonds or portions thereof to be redeemed (if any);
- Giving notice as required under the authorizing resolution;
- Registering the transfer of bonds;
- Obtaining any consent or other action to be taken by the owners; and
- All other purposes needed.

## **ADVANCE REFUNDING AS A DEBT ADMINISTRATION TOOL**

An advance refunding is a procedure by which bonds are refunded early. Typically, this involves the sale of an issue prior to the first call date of the original issue. The Office of the State Treasurer (OST) is responsible for review and approval of proposed Advance Refundings. Prior to the Tax Cuts and Jobs Act eliminating tax-exempt Advance Refundings after January 1, 2018, Advance Refundings were usually executed to realize debt service savings when new bonds were sold at rates significantly below those of the original issue. As of January 1, 2018, Advance Refundings may be undertaken; to determine the structure most beneficial for your district's debt, it is recommended you consult a Municipal Advisor.

The Legislative Assembly declares that the issuance of Advance Refunding bonds and the authority to effect a Forward Current Refunding are matters of general statewide concern; a public body may issue Advance Refunding bonds or enter into Current Refundings in compliance with [ORS 287A.360-287A.380](#) and [Oregon Administrative Rule 170-062-0000](#) adopted by the OST.

### **Types of Advance Refundings**

#### *Net or Net Cash Defeasance*

The most common type of Advance Refunding is the net cash defeasance method. Bond proceeds are placed in an escrow account and are invested, usually in U.S. Treasuries, so that interest and principal of the investments **at their maturity** are sufficient to pay the principal, interest, and any call premiums on the refunded issue. Once proceeds of the Advance Refunding issue are invested and placed in the escrow and all legal requirements are met, the refunded issue is no longer considered outstanding (see [ORS 287A.195](#)). The refunded debt no longer counts toward any constitutional or statutory debt limit.

#### *Crossover Refunding*

On a Crossover Refunding, the proceeds of the Advance Refunding issue are invested in an escrow account so that the interest earnings and maturing principal are used to meet debt service requirements on this new obligation until the pre-arranged Crossover date.

The Crossover occurs on or after the first call date of the refunded issue. The Issuer continues to make debt service payments on the old issue until the Crossover takes place. *The original bonds are not defeased until they are actually retired and any covenants associated with the original debt remain in effect until the call.*

### **Federal Advance Refunding Regulations and State Treasurer's Office Review and Approval**

Advance Refunding issuance policy is governed by U.S. Treasury regulations relating to arbitrage bonds. The general purpose of the arbitrage rules, contained in Section 103 of the Internal Revenue Code, is to prevent municipalities from making a profit by selling tax-exempt bonds and investing the proceeds in higher-yielding taxable securities. Any bond, the proceeds of which are not invested in conformity with the specific yield restrictions of Section 103, is considered to be an Arbitrage Bond, unless certain exemptions are met.

The Office of the State Treasurer must review and approve all proposed Advance Refundings in Oregon in accordance with [ORS 287A.370](#) and [OAR 170-062-0000](#). The law mandates that the refunding plan be submitted to OST following adoption of the ordinance or resolution approving of the refunding plan.

Advance Refunding financings are often complex. OST requires that any Issuer considering an Advance Refunding consult with a Municipal Advisor early in the process regarding the process toward debt refinancing.

## STEP 8: SECURITIES LAW DISCLOSURE FOR MUNICIPAL SECURITIES

### WHAT IS DISCLOSURE?

Disclosure is the act of providing investors with all known material information (whether favorable or negative) which the investor might need to make informed investment decisions. Disclosure begins with the Preliminary Official Statement (POS) and continues over the life of the bonds (continuing disclosure).

### NEW ISSUE DISCLOSURE

The Securities Act of 1933 generally requires that securities must be registered with the U.S. Securities Exchange Commission (SEC) before they can be offered to investors. The Securities Exchange Act of 1934 imposes reporting requirements on issuance of securities. However, there is an exception for municipal securities. Generally, a security issued or guaranteed by any state, political subdivision of a state/territory, or any public instrumentality of a state/territory is not subject to the registration and reporting requirements.

**Although municipal securities are exempt from registration and reporting requirements, they are subject to the antifraud provisions of the federal securities law.**

SEC Rule 15c2-12 requires an [Underwriter](#) of municipal securities to:

1. Obtain and review an Issuer<sup>1</sup>'s Official Statement that, except for certain information, is deemed final by an Issuer, prior to making a purchase, offer, or sale of municipal securities;
2. Provide the Issuer's most recent Preliminary Official Statement (if one exists) to potential customers (for Negotiated sales);
3. Deliver to customers, upon request, copies of the final Official Statement for a specified period of time; and
4. Contract to receive, within a specified time, sufficient copies of the Issuer's final Official Statement to comply with the rule's delivery requirement, and the requirements of the rules of the Municipal Securities Rulemaking Board (MSRB).

The Issuer of the securities has the primary legal responsibility for the accuracy and completeness of information in the disclosure document and may be held primarily liable under the federal securities laws for misleading disclosure. Under SEC Rule [10b-5](#), it is unlawful to make an untrue statement of a material fact or to omit to state a material fact resulting in fraud

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<sup>1</sup> The term "Issuer" is a general reference to issuing districts, municipalities, and local governments.

or deceit. Accordingly, the Official Statement must disclose material information about the securities to allow investors to make informed decisions.

## **WHAT MUST BE DISCLOSED?**

The Issuer must disclose all material information with no [material misstatements or omissions](#). An omitted fact is material if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information made available.

Materiality is a facts and circumstances test. The SEC has determined to be material:

- Intended use of bond proceeds,
- Accurate disclosure of financial condition,
- Any financial interest in transaction, and
- Potential taxability of bonds.

The SEC has suggested that the governing body of the Issuer review the disclosure documents at least two weeks prior to its distribution.

The SEC requires Underwriters to perform due diligence under supervised formal written policies and procedures prior to purchasing a transaction. Municipal Advisors have a similar responsibility under the Duty of Care provision in MSRB Rule G-42. Due diligence refers to the process of forming a reasonable basis for a belief in the truthfulness, accuracy and completeness of the key representations made in the OS. Due diligence goes beyond mere credit analysis to evaluation of the accuracy and completeness of the Issuer's disclosure. The financing team, including the Issuer, Bond Counsel, Municipal Advisor, and the Underwriter (in a Negotiated sale), and Underwriter's Counsel, (if any), will typically convene a due diligence call prior to finalizing the POS. On the call, the financing team will review a broad questionnaire designed to determine the accuracy and completeness of the disclosure in the POS and to discover any material misstatements or omissions in the disclosure necessary to make the official statement accurate and complete.

## **SECONDARY MARKET DISCLOSURE (SEC RULE 15C2-12)**

Under [SEC Rule 15c2-12](#) (the Rule), Underwriters are prohibited from purchasing or selling municipal securities unless the Obligor on the securities has contracted to provide continuing disclosure as described in the Rule, unless the offering is exempt.

Since 1995, however, the rules have changed. Disclosure does not stop upon completion of the primary offering. Rather, the SEC has declared that future investors trading in the secondary

market are entitled to receive virtually the same level of information that was furnished in the primary offering stage.

Continuing disclosure generally refers to a process of providing “annual historic financial information” (which includes current financial information and operating data) on a regular basis for as long as securities are outstanding.

Amendments to SEC Rule 15c2-12 took effect February 27, 2019. Issuers of new municipal bonds are required to agree to disclose to investors significant information about the incurrence of bank loans and similar borrowings, as well as events reflecting financial difficulties related to its existing financial obligations. The new disclosure requirements apply if a municipality issues a bond on or after February 27, 2019, for which it enters into a new continuing disclosure agreement.

## **WHO MUST PROVIDE CONTINUING DISCLOSURE?**

The Rule applies to Obligated Persons, which is defined in Rule 15c2-12 as:

*“...any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account ... committed by contract or other arrangement to support payment of all, or part of the obligations on municipal securities...”*

In most cases, the governmental unit that is issuing bonds will be an Obligated Person subject to the continuing disclosure requirements. However, this does not always hold true. The key to identifying the Obligated Person(s) is to carefully read the contract or other document describing repayment of the bonds. The Rule does not require a disclosure commitment from *each* Issuer or Obligated Person. Instead, only those parties for whom financial information and operating data are presented in the Official Statement are covered. Thus, a purely conduit Issuer of non-recourse Revenue Bonds may not be subject to continuing disclosure so long as the conduit Borrower contracts to provide continuing disclosure. For pooled financings with multiple participants, objective criteria (e.g. percentage of overall payment support) and the continuing disclosure agreement executed at the time of issuance will determine who the appropriate disclosure parties are and what is required to be disclosed. For example, for certain pooled bond offerings (such as the OSBA pension bond pools), individual Borrowers are required to provide their audited financial statements and certain operating data but the Trustee is required to provide notice of material events (such as rating changes).

The Rule excludes providers of most forms of credit enhancement (e.g., bond insurance, letters of credit or other liquidity facilities) from the definition of Obligated Person.

## HOW ARE DISCLOSURE OBLIGATIONS DETERMINED?

A general representation or undertaking to provide continuing disclosure is typically included in the principal documents under which the securities are issued (e.g. the trust indenture, ordinance, or resolution). Typically, the specific requirements of the obligation to provide annual financial information is set out in a separate agreement or certificate entered into for the benefit of bondholders.

An Underwriter must receive reasonable assurance regarding the continuing disclosure commitment before agreeing to act as Underwriter. In Negotiated offerings, this assurance will be obtained at the time of signing the bond purchase contract. In Competitive offerings, such assurance will be contained in the Issuer's notice of sale. A form of the undertaking to provide continuing disclosure is usually included as an appendix to the POS.

The Rule allows for delegation of information dissemination responsibilities to designated agents or to indenture Trustees. The Rule does not enumerate the consequences if an Issuer breaches its disclosure undertaking. Remedies for breach will vary under state law and, the SEC concludes, are a subject for negotiation between the parties. The Rule does require, however, that Issuers disclose in their final Official Statements all instances in the previous five years in which they have failed to comply with any continuing disclosure obligations.

## WHAT CONSTITUTES CONTINUING DISCLOSURE?

Two things must be disclosed under the Rule: annual financial and operating information and certain material events "...as they occur". Annual financial information is defined as:

*"...financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person."*

The Rule does not dictate strict form and content requirements for what constitutes the "annual financial information." The written undertaking by the Issuer or Obligated Person, as well as the Final Official Statement (FOS), must specify in reasonable detail those categories of information that will be included. The undertaking must also specify the date by which the annual financial information will be provided (e.g., X days following the end of the fiscal year or a date certain, such as by March 1 of each year).

The undertaking must describe the accounting principles used in preparation of the annual financial information, including whether or not audited financial statements will be prepared. An undertaking that references generally accepted accounting principles, as modified by the Government Accounting Standards Board ([GASB](#)), or mandated state statutory principles (as in effect from time to time) would satisfy this provision of the Rule.



Operating data is a subset of annual financial information and refers to historic quantitative information in the Official Statement that provides investors material financial information in connection with the offering of securities. For example, in a health care financing, operating data would typically include a description of hospital administration and management, service area and economic base, capital plan and operating statistics (such as bed use), admissions criteria, payor use, etc. For ease of compliance, Issuers may choose to include the operating data required to be provided as part of its continuing disclosure as part of the management discussion and analysis in its annual financial statements or as a supplementary section so there is only one document to be filed on an annual basis.

In addition to disclosure of “annual financial information,” the [Rule](#) requires (as of August 2018) disclosure of sixteen listed events within 10 business days after the occurrence of the event:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancement reflecting financial difficulties.
5. Substitution of credit or liquidity providers or their failure to perform.
6. Adverse tax opinions or events affecting the tax-exempt status of the securities.
7. Modifications to rights of security holders, if material.
8. Bond calls, if material, and tender offers.
9. Defeasances.
10. Release, substitution or sale of property securing repayment of the security, if material.
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar event of the obligated person.

*Note – For the purposes of the event identified in this paragraph 12, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.*

13. Consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
14. Appointment of a successor or additional Trustee or the change of name of a Trustee, if material.

15. Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of defaults, remedies, priority rights, or other similar terms of financial obligation of the issuer or obligated person, any of which affect security holders, if material.
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

Failure to provide annual financial information by the date specified in the written undertaking also requires a notice of the failure to file.

The determination of whether events other than the 16 specified “material events” should be the subject of event filings is left to the Issuer. Issuers should beware of any undertakings to provide notice of events beyond those specifically listed in the Rule. Undertakings that expand the list of sixteen with open-ended disclosure commitments like “...and any other material events” should be avoided.

The timing of the material event filing depends on when the affected bonds were issued. Currently, continuing disclosure agreements for new bonds must state that the notice of material events must be provided to EMMA within ten business days. Older bonds may have less onerous reporting requirements such as requiring such events to be reported in “timely manner”. Issuers should be aware of the content of all their continuing disclosure agreements and have practices and procedures in place to ensure that materials events, should they occur, are reported as required in the continuing disclosure agreement.

## **WHERE TO DISCLOSE?**

Currently (September 2018), obligated persons under the Rule are required to file on [Municipal Securities Rulemaking Board](#) (MSRB) through its electronic web-based system known as [EMMA](#), which stands for Electronic Municipal Market Access. Document filing via EMMA is free.

## **MODIFICATION OR TERMINATION OF DISCLOSURE OBLIGATIONS**

Generally, the undertaking to provide continuing disclosure may not be modified after the fact. However, an undertaking that includes an amendment provision may comply with the Rule if certain conditions are met. Samples of Continuing Disclosure Certificates can often be found in the Appendix of an Official Statement (which can be found on [EMMA](#)).

An Issuer or Obligated Person may terminate their continuing disclosure obligations when they cease to have any liability for payment on the bonds. The SEC has stated that this occurs upon full redemption of the securities, or the legal defeasance and release of any lien securing the bonds.

Although it is not expressly permitted by the Rule, many Issuers include a provision authorizing them to terminate their disclosure undertaking if they obtain an opinion of Bond Counsel.

## **EXEMPTIONS FROM THE RULE**

All municipal securities issued prior to July 3, 1995 and bond issues of less than \$1 million in aggregate principal amount are exempt from the Rule altogether. Bond issues in large minimum denominations (i.e., \$100,000 or more face value) are exempt from the Rule if:

- They are Privately Placed with no more than 35 sophisticated investors; or
- They have a maturity of 9 months or less; or
- They may be optionally tendered at par at least every 9 months.

Effectively, this means that most Private Placements and variable rate issues are exempt from the Rule. Short-term notes and other municipal securities whose stated maturity is 18 months or less are exempt from the financial information disclosure requirements of the Rule. However, Issuers must still undertake to provide timely notice of material events.

## **LINKS / RECOMMENDED READING**

Rule 15c2-12 applies to different bond structures and programs in different ways, particularly with respect to the Obligated Person analysis. Issuers must consider the kinds of debt they issue (e.g. general obligation, revenue, special assessment, etc.) and their own unique circumstances. This would include establishing a protocol for who will speak on an Issuer's behalf and when, what they will say, and how they will say it. Issuers with multiple bonding programs should also try to maintain consistency in their contractual undertakings. Standardizing the form of undertaking and the schedule for reporting should ease some of the administrative burden of providing continuing disclosure on numerous programs. Finally, when in doubt about disclosure obligations, Issuers should consult with their Bond Counsel. The following are some helpful links in regards to disclosure:

- [GFOA Best Practices](#)
- [GFOA Blue Book](#)
- [Securities Industry and Financial Markets Association \(SIFMA\)](#)
- [Municipal Securities Rulemaking Board \(MSRB\)](#)
- [Securities Exchange Commission \(SEC\)](#)