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CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION

A Survey of the County Treasurer's Role in School District General Obligation Bond Financing

INTRODUCTION

In May 2011, Mark Saladino, the Los Angeles County Treasurer and Tax Collector, issued a white paper titled **County of Los Angeles School District General Obligation Bonds**, in which he voiced concerns that certain school district general obligation bond (GO) financing practices may be outside current statutory parameters. He also stressed the need for awareness of best practices when addressing the expectations of county voters and taxpayers in the issuance of school district debt. In the white paper Treasurer Saladino cited his obligation to ensure that these constituents receive value for their tax dollars.

This same sentiment was expressed by the California Association of County Treasurers and Tax Collectors (CACTTC) in a statement released in August 2011. Specifically, CACTTC supported the goals of the white paper and expressed the desire to be a resource and advocate for school districts and county boards of supervisors in achieving successful school district GO bond issuance in the future.

Aware of the concerns of Treasurer Saladino and CACTTC, CDIAC undertook a study of the relationship between California school districts and the County Treasurer's Office with regard to GO bond financings.[1] CDIAC contacted County Treasurers to better understand the authorities and processes underlying the approval, sale, and administration of school district GO bonds. CDIAC also sought a better understanding of the roles of other governing bodies including the school board and the county board of supervisors in the issuance of school district GO bonds. Fifty-seven of the 58 County Treasurer Offices participated in the study.[2]

THE ROLE OF THE COUNTY TREASURER IN SCHOOL DISTRICT GO FINANCINGS

School districts have authority to issue GO bonds to finance new projects under both the California Education Code (see Section 15140 et seq.) and Government Code (see Section 53506 et seq.). In neither case does the County Treasurer have a statutory role in the issuance. Rather the County Treasurer's role is to establish the tax rolls and collect the taxes needed to service the debt.

CDIAC surveyed County Treasurers to understand their relationship to the school district in district GO bond sales with respect to the following topics.

- Bond approval and issuance process
- Responsibility for oversight
- Continuing bond disclosure
- Financial and bond monitoring
- Guidance for school GO bonds

The survey also sought to understand differences in their roles when the school district GO bonds are issued under either the Education or Government Code. The remainder of the article summarizes the responses of the 57 County Treasurers that participated in the survey.

Is There a County Treasurer Approval Process for School District GO Bonds?

When a school district makes the decision to issue bonds to finance facilities, it undertakes certain steps in advance of the sale of the bonds. One of these steps is to obtain the approval of the governing body. Typically this involves the school board adopting a resolution that requests either the county board of supervisors to permit the school board to issue the bonds directly, authorizes the issuance of the bonds, or requests the county board of supervisors to issue the bonds on behalf of the school district. If the school district elects to issue bonds under Government Code, the school board authorizes and issues the bonds directly and the county board of supervisors is not required to take action.

County Treasurers explained that the county board of supervisors' approval process under Education Code used one of two approaches: 1) a standing resolution or "blanket approval" or 2) a formal resolution. The former approach authorizes a school board to issue directly all series of bonds to be issued pursuant to a GO authorization. The latter approach was described as being a more "hands on" approach and entailed

[1] Although most County Treasurers perform the additional duty of tax collection and are named the County Treasurer and Tax Collector, we refer to them here only as County Treasurers. Furthermore, all references to the County Treasurer or the County Treasurer's Office are not made to the individual office holder but to the office, including his or her staff.

[2] The Office of the Treasurer and Tax Collector for the City and County of San Francisco did not participate.

authorizing a school board to issue and sell directly a single series of bonds, authorizing the execution and delivery of documents related to the issuance of such series, and directing staff to take other actions necessary to sell and issue such series of bonds. County Treasurers that responded to questions about the approval process reported that 35 percent of county boards of supervisors required the blanket approach with 65 percent reporting the requirement of a formal resolution.

What is the County Treasurer's Oversight Responsibility for School District GO Bonds?

There is no legal requirement under either the Education or Government Code for the County Treasurer to oversee the expenditure of bond proceeds after the bonds are issued—that is the responsibility of the school district. In addition, the school district is responsible for ensuring that bond proceeds are expended in accordance with the project list contained in the bond election materials, the authorizing bond resolution, and applicable laws. The school board may delegate the administration of the expenditures to school district staff, but the school board is the entity that is ultimately responsible if there is an unlawful expenditure. It is the school board that ultimately makes the determination as to the allocation of bond funds among the different authorized bond projects. Bonds issued under Proposition 39 have a series of requirements that involve additional oversight by a Citizens Oversight Committee.

What is the Role of the County Treasurer in the Continuing Disclosure Process for School District GO Bonds?

The Securities and Exchange Commission Rule 15c2-12 requires issuers to submit annual financial information and any material event notices to the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA) portal in a timely manner. In a study of issuer disclosure practices conducted earlier this year, CDIAC found that, on average, school districts submitted their required annual financial information to the MSRB's EMMA portal less timely than other issuers tested.[3] Given the results of the disclosure study, CDIAC asked County Treasurers to describe their role in the continuing disclosure process for school district GO bonds. Specifically, County Treasurers were asked if school districts are required to submit ongoing GO bond disclosure documentation to the County Treasurer.

There is no requirement that school districts provide any disclosure-related information to the treasurer nor is there a role for the treasurer in channeling this information to the EMMA portal. As expected then, nearly 81 percent of treasurers said that they do not require school districts to submit any ongoing GO bond disclosure documentation. Only 14 percent of the County Treasurers surveyed employ a process to file disclosure documents on behalf of school districts.

Is there a County Treasurer Bond Monitoring Process for School District GO Bond Financings?

After the school district GO bonds are issued, whether by the county board of supervisors or by the school district, itself, the school district typically continues to perform administrative tasks, including managing ongoing consulting services like those provided by rebate compliance providers, continuing disclosure agents, and investment advisors. These tasks also include tracking the progress of the projects, ensuring compliance with tax rules, monitoring the use of project funds, and filing continuing disclosure documentation with the EMMA.

As mentioned above, there is no statutory requirement under either the Education or Government Code for the County Treasurer to monitor the bonds after issuance. As a result, the majority of the County Treasurers (75 percent) said they do not have a bond monitoring process in place for school district GO bonds. Twenty-five percent said that they did.

Does Your County Treasurer Have Written Guidance for School District GO Bond Financings?

Over 90 percent stated that they do not provide any written guidance, requirements or policies to school districts relating to debt financing. The Government Finance Officers Association (GFOA) recommends that all state and local governments adopt comprehensive written debt management policies related to debt structuring and issuance practices, and that governments review them at least annually and revise them as necessary.

GENERAL OBSERVATIONS FROM THE STUDY

Among the survey findings were the following:

- A majority (65 percent) of County Treasurers reported that their county board of supervisors requires a formal resolution process to issue school district GO bonds under Education Code, while (35 percent) reported they use blanket approvals.
- School boards have a legal responsibility for oversight of school district GO bond issues. County Treasurers do not play a significant role in oversight, disclosure, or monitoring, and are under no legal requirement to do so.
- Because of their limited role, County Treasurers do not offer written guidance on school district GO bond issuance.

The survey revealed that County Treasurers are not directly involved in the GO bond sale. While decisions related to the selection of the financing team, structuring the

[3] See CDIAC Publication www.treasurer.ca.gov/cdiac/publications/cafr.pdf

bonds, or pricing the bonds provide opportunities for issuers to maximize their project and financial goals, including achieving the lowest cost of funds, County Treasurers did not directly participate in these decisions. A lower cost of funds implies a lower tax burden for taxpayers. The study also revealed the fact that County Treasurers are not involved in post-issuance administration of the bonds, including tracking bond expenditures and meeting ongoing disclosure obligations. In a study conducted by CDIAC on issuer compliance with their CAFR filing obligations, school districts performed worse than other issuers studied.

County Treasurers expressed differing views as to their responsibilities when involved in a school district GO bond issue and the extent to which those responsibilities change if the school district issues on its own behalf. Many bond counsels believe that county boards of supervisors are obligated to approve GO bonds even under the Government Code, but not all County Treasurers agree. While some County Treasurers view their role as merely administrative, others feel strongly that they have a responsibility to make sure that no one takes advantage of school districts in bond transactions. In their view, this role extends to safeguarding taxpayers by making sure that the bonds are issued at the lowest cost and with a structure that maximizes project and financial outcomes. Some County Treasurers believe when a county issues bonds on behalf of the school district they should take an active role to ensure a fair bond transaction, including overseeing the bond sale.