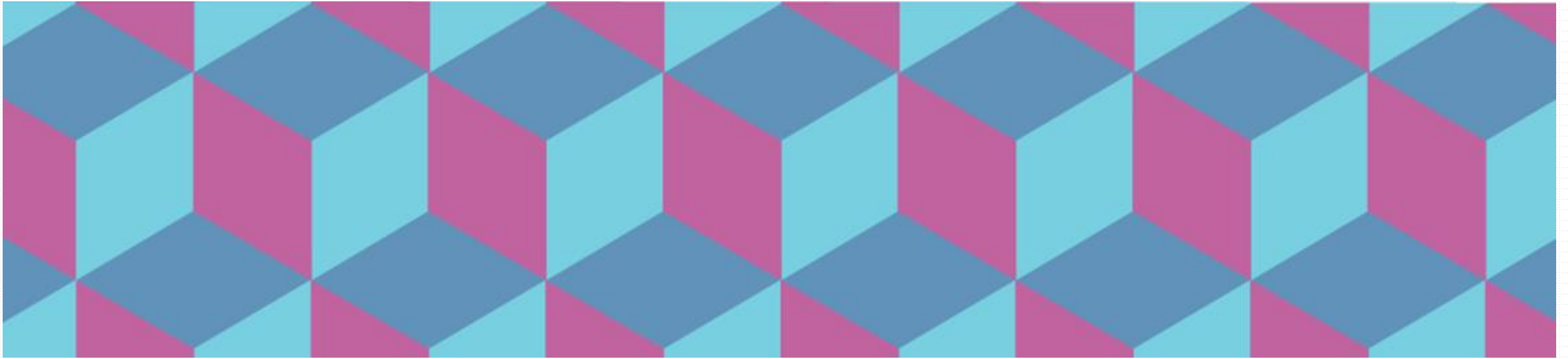


# MUNICIPAL DEBT ISSUANCE FUNDAMENTALS



## **SESSION 2: You Sold Your Bonds, Now What?**

SEPTEMBER 16, 2020

Jay Goldstone, Former Chief Operating Officer and Chief Financial Officer, City of San Diego

Steve Heaney, Former Co-Head Municipal Securities Group, Stifel

Jacqui Jennings, Partner, Schiff Hardin, LLP

*Produced By: The California Debt And Investment Advisory Commission (CDIAC)*

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## **Slides**

Available in Handouts section of the menu

## **Questions**

Ask throughout the webinar, answers provided at end of the program

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# CDIAC RESOURCES

Top resources are comprehensive guides:

*California Debt Financing Guide*

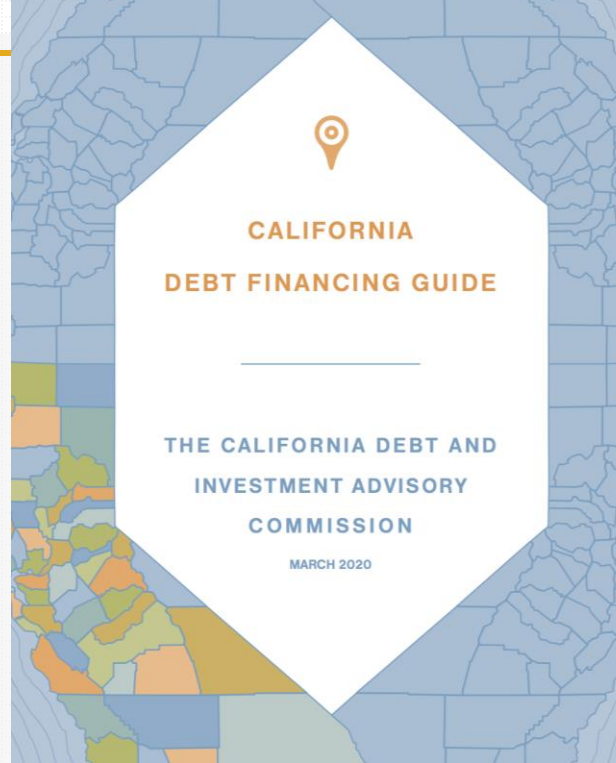
*California Public Fund Investment Primer*

Also see:

[Local Agency Investment Guidelines \(LAIG\)](#) |

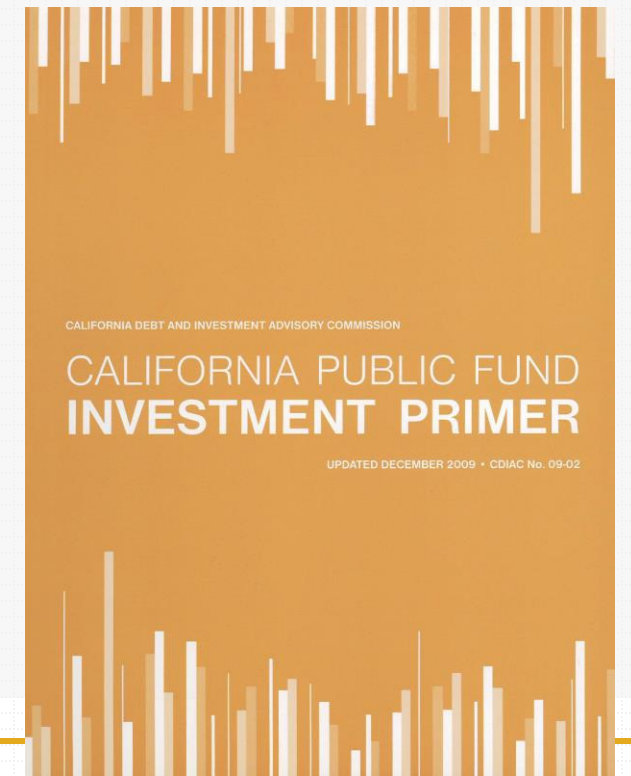
[Publications](#) | [Education Programs](#) | [Data](#)

[on Debt in California](#)



<https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>

<https://www.treasurer.ca.gov/cdiac/invest/primer.pdf>



# Speakers



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# Webinar Overview

See corresponding handout  
in the Handouts section in  
your Control Panel.

## Municipal Debt Issuance Process

*Generalization of the municipal debt  
issuance process. This is not  
comprehensive or illustrative of how  
every bond will be issued.*

### 1. Planning

- Debt Management Policy
- Decision to Issue Debt
- Role of the Finance Officer

### 2. Pre-Issuance

- Selection of Financing Team
- Debt Structure
- Legal Documents & Initial Disclosure
- Underwriter Due Diligence
- Credit Rating
- Marketing Strategy
- Pre-Sale Pricing Meeting, *negotiated sale*

### 3. Issuance

- Sale & Pricing
- Closing Documents
- Report of Final Sale

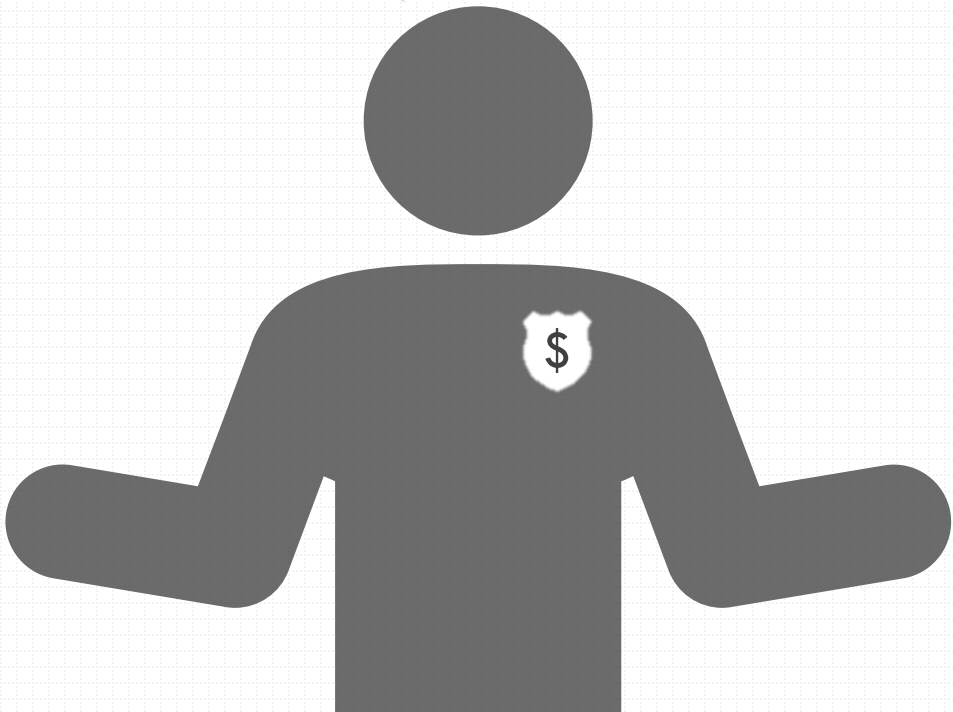
### 4. Ongoing Administration

- Cyclical Tasks
- Continuous Tasks

### 5. End of the Issue

- Refunding or Repayment
- Record Retention

Who is in charge  
of debt issuance?



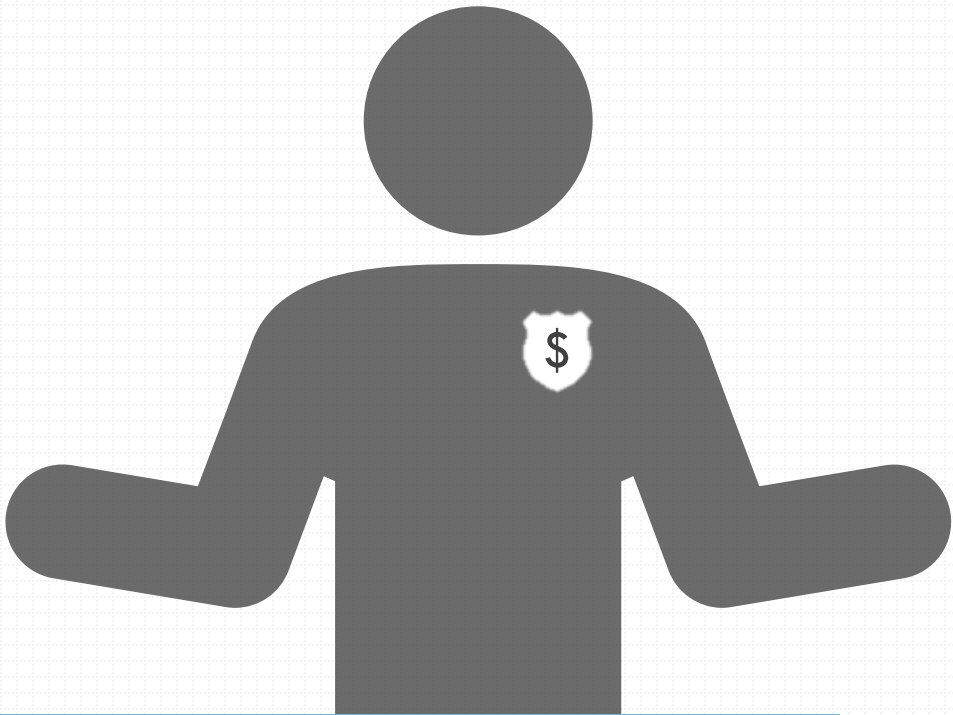
## YOU ARE AS THE ISSUER

- This is **YOUR** government's transaction
- The debt is issued within the parameters of **YOUR** Debt Policy
- When the deal is done, **YOU** may have to live with the obligations and commitments for the next 20 to 30 years
- If anything goes wrong (i.e. default, failure to comply with legal documents, etc.), the regulators/enforcers will come knocking on **YOUR** door
- It is **YOUR** potential for personal liability and reputational damage

## — Key Areas of Responsibilities —

- It is your debt policy that you developed and approved
- You have the sole responsibility to:
  - Decide if and when to issue debt
  - Make sure everyone within your organization understands his/her responsibilities
  - Select your financing team
  - Determining the structure
    - Duration of the debt
    - Fixed versus variable
    - Etc.
  - Provide accurate information
  - Read the documents
  - Comply with all laws and regulations
  - Make your timely payments and continuing disclosures

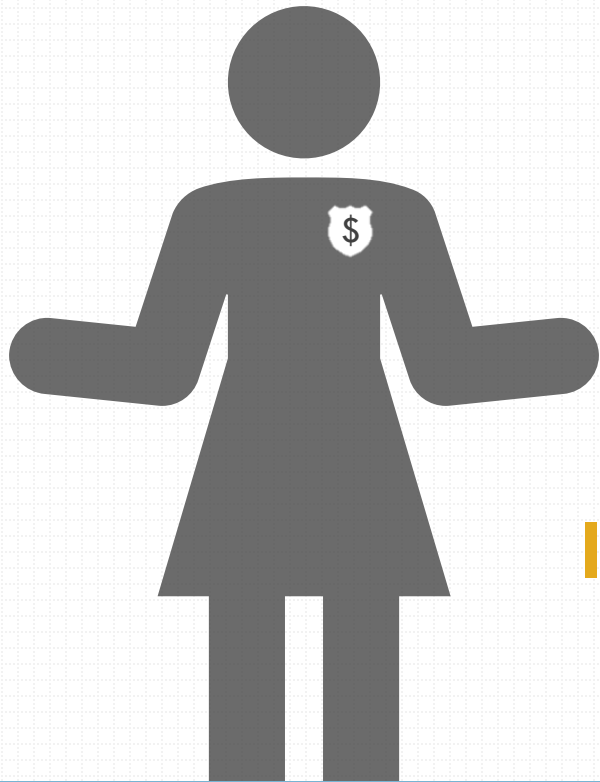
How do I keep out of trouble?



- Be an active participant
  - Attend every meeting
  - Read all the documents
  - Don't be afraid to ask questions
  - Be prepared to present the deal to your governing board
  - If you don't understand the transaction, **DON'T DO IT**
- Make sure your internal team understands their responsibilities



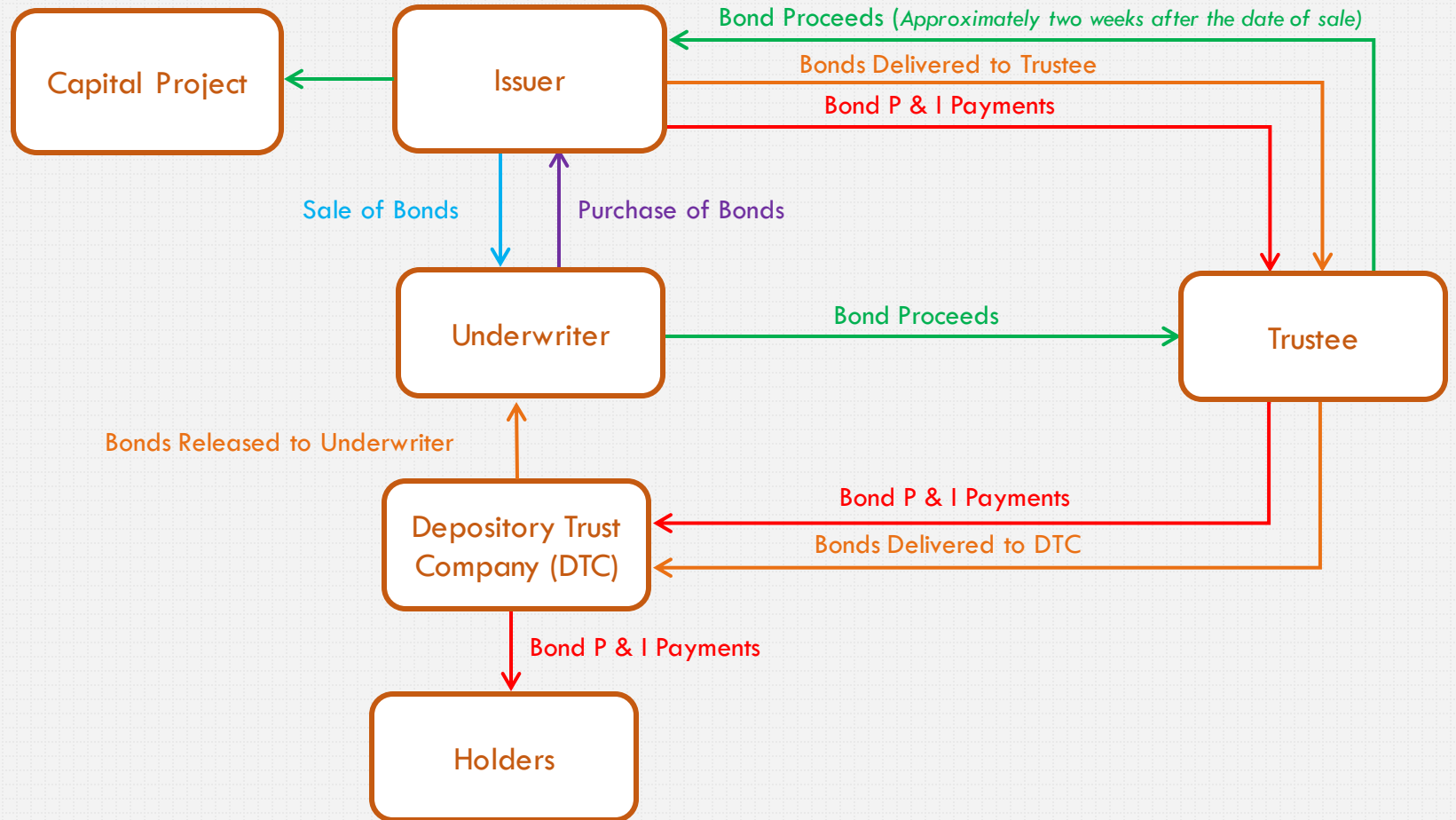
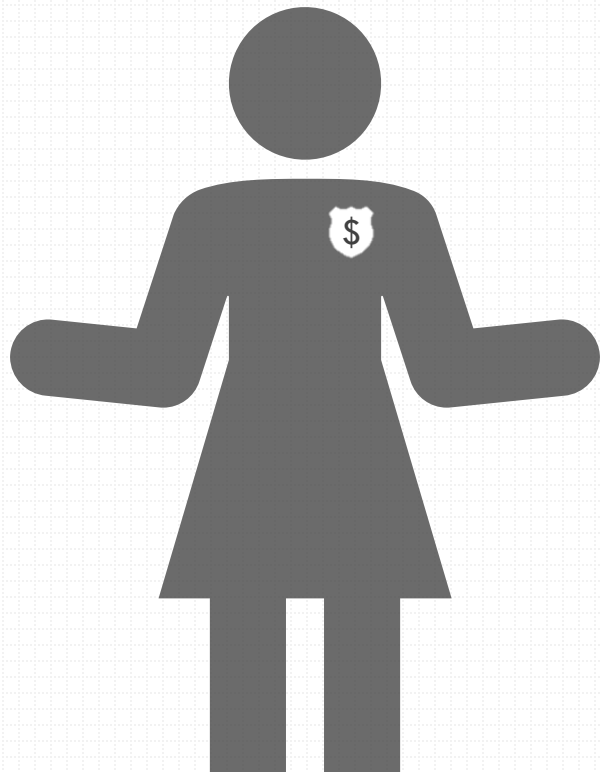
Do you have more tips on how I can stay out of trouble?



- At a minimum, provide bi-annual staff training and training to your governing board
- Have staff sign attestations / certifications relating to the information they provide
- Develop a tickler system
- Be prepared for staff turnover

**INTENT DOESN'T MATTER TO THE REGULATORS  
ACTIONS (OR LACK THEREOF) DO!!!!**

I sold my bonds,  
now when do I  
get my money?



# Bond Purchase Agreement / Bond Purchase Contract

[CDIAC Debt Guide, Sections 5.3.3 and 5.3.4](#)

## Parties

Issuer | Underwriter | Borrower | Obligated Party

## Key Provisions

### Pricing Information:

Representation & Warranties | Underwriter's Outs | Expenses | Closing Conditions | Closing Documents | Form of Opinion of Issuer's Counsel | Redemption Provisions | Form of Issue Price Certificate

## Purpose

Provides for the sale of the bonds by the issuer to the Underwriter.

### Specifies:

- (i) the terms of the bonds;
- (ii) conditions precedent to the obligation of the Underwriter to purchase of the bonds;
- (iii) the delivery date of the bonds;
- (iv) the conditions permitting the Underwriter to withdraw from the agreement (the "Underwriter's Outs");
- (v) representations and warranties of the issuer and borrower, including a representation that the Preliminary Official Statement was deemed final by the issuer as of its date and compliance with past continuing disclosure undertakings;
- (vi) the documents to be delivered at closing;
- (vii) the Underwriter's fees;
- (viii) the expenses to be paid by various parties;
- (ix) certain SEC requirements to be followed by all parties; and
- (x) the method for determining the issue price of the bonds.

Executed after the bonds have been priced by the Underwriter.

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## ONGOING ADMINISTRATION

### **Cyclical Tasks**

Debt Service, Annual Report, and Annual Debt Transparency Report

### **Continuous Tasks**

15c2-12 Event-Based Disclosures, Voluntary Disclosures, Internal Controls, Investor Relations, Monitor for Refunding or Restructuring Opportunities, Follow and Maintain Debt and Disclosure Policies, Investment of Bond Proceeds, Maintain Tax Exempt Status (Arbitrage and Use of Proceeds)

# The Issuer's Perspective

[CDIAC Debt Guide](#)

Section i.5

[GFOA Best Practices](#)

Debt Management / Post Issue Compliance

I sold my bonds,  
now what do I do?



## **IMPORTANT**

*Make sure you and your appropriate staff understand the obligations under the indenture, tax certificate and continuing disclosure agreement*

### **Establish a Tickler System for Key Dates**

- Debt service payments
- Continuing disclosure filings
- Arbitrage rebate obligations
- Spending timelines
- Yield restrictions
- Use of proceeds

## Internal Tracking

### Managing Expenditures

Appropriate use of funds

Establish separate  
Fund(s)/Accounts/Projects

Determine appropriate  
booking of transaction in your  
general ledger

### Internal Controls

Refer back to tickler system

Identify staff responsibilities

**DON'T MISS KEY  
DATES/DEADLINES**

[Task Force on Bond Accountability  
Report](#)

## Investment of Bond Proceeds

Understand federal, state and local laws for permissible investments

Investment of bond proceeds involves investment considerations beyond those of operating funds

Actively monitor construction activities

Develop procedures for reinvestment of bond proceeds when actual cash flow is different than forecast (it will be)

Know who can work with you on the investment of bond proceeds (i.e. investment advisor vs broker/dealer)

[CDIAC Debt Guide](#), Section i.5

[GFOA Best Practice](#), Investment and Management of Bond Proceeds



## Other Ongoing Obligations

### Ongoing Rating Agency Surveillance

### Investor Relationship Management

[CDIAC Debt Guide](#)

Section i.5.1.3 and 5.8.1

[GFOA Best Practice](#)

Maintaining an Investor Relations  
Program

### Preserve Your Records

[CDIAC Debt Guide](#)

Section 8.3.6

[GFOA Best Practice](#)

Post-Issuance Policies  
and Procedures

## Continuing Disclosure & Other Obligations

This obligation will be with you for the life of the bonds.

Align responsibility for various disclosure obligations.

Be prepared to file Material Event Notices whenever appropriate and necessary.

# Continuing Disclosure Undertaking (CDU)

[CDIAC Debt Guide](#)

Section 8.4

[GFOA Best Practice](#)

Understanding Your Continuing  
Disclosure Responsibilities



This seems familiar, like it was one of the documents I reviewed as the issuer's finance officer at issuance...

## Parties Involved in CDU

- Issuer
- Borrower/Obligated Party
- Dissemination Agent
- Trustee

## Materiality

Likelihood that a reasonable investor would consider the fact important or would alter the 'total mix' of information available

## CDU Purpose

Rule 15c2-12 was adopted by the SEC in 1989 and has been amended twice, so far

The CDU contains the undertakings of the issuer (and each Obligated Party) to provide annual updates of specified information (Annual Reports) by a specified date certain and notices of the occurrence of **specified events**, generally within 10 business days following occurrence, pursuant to Rule 15c2-12

Remains in effect during the lifetime of the bonds

## CDU Key Provisions

- Content of the Annual Report
- Filing Date for the Annual Report
- List of Significant Events
- Filing Date for Filing Notices of the Occurrence of Significant Events
- Amendment Procedures

# EXCHANGE ACT OF 1934

Established the SEC, the federal agency responsible for enforcing securities laws

Enacted to govern securities transactions on the secondary market (*i.e.* trades executed through brokerage companies) to ensure greater financial transparency and accuracy, and promote an environment of fairness and investor confidence

## The Antifraud Provisions:

### Section 10(b)(i)

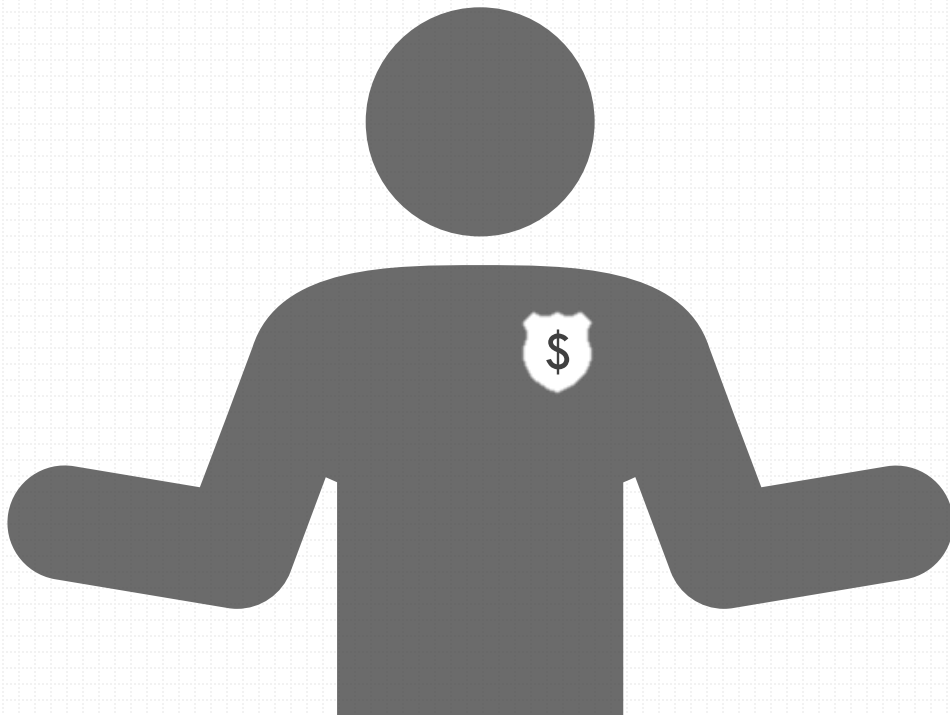
“It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality or interstate commerce, or of the mails or of any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”

### Rule 10b-5

Makes it “*unlawful* for any person, directly or indirectly, by the use of any means . . . of interstate commerce, or of the mails . . .

- To employ any device, scheme, or artifice to defraud
- To make any untrue statement of a material fact or to omit to state a *material* fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, *in connection with the purchase or sale of any security*”

How to I comply  
with Rule 10b-5?



## Application of Rule 10b-5

- Whatever you do say, be accurate
- Don't omit any *material* information
- Applies whenever the issuer "speaks to the market," including:
  - Initial disclosure in the Preliminary and final Official Statements
  - Continuing disclosure filings
  - Voluntary filings
  - Press releases
  - Websites
- In its August 2010 Order against State of New Jersey the SEC repeated its long-stated position that Rule 10b-5 also applies to "[continuing] disclosure and to any other statements to the market"

# Specified Events

Description of Specified Event, <i>as amended</i>	Reporting Requirements for all Municipal Securities
Principal and interest payment delinquencies	Report without regard to materiality
Non-payment related defaults	If material
Unscheduled draws on debt service reserves reflecting financial difficulties	Report without regard to materiality
Unscheduled draws on credit enhancements reflecting financial difficulties	Report without regard to materiality
Substitution of credit or liquidity providers, or their failure to perform	Report without regard to materiality
Tax status issues	Report any of the following, without regard to materiality: adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the security Report, if material, any events affecting the tax status of the security (including Build America Bonds)
Modifications to rights of security holders	If material
Bond calls, if material, and tender offers	Report tender offers without regard to material
Defeasances	Report without regard to materiality
Release, substitution, or sale of property securing repayment of the securities	If material
Rating Changes	Report without regard to materiality
Bankruptcy, insolvency, receivership or similar event of the obligation person	Report without regard to materiality
Consummation of a merger, consolidation, or acquisition involving an obligated person, or the sale of all or substantially all the assets of the obligated person, other than in the ordinary course of business, the entry of 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
Appointment of a successor or additional trustee or the change of name of a trustee	If material

**PLUS Financial Obligation Amendments**

## Financial Obligation Amendments

Amendments to Rule 15c2-12 require disclosure of events concerning “financial obligations”, effective February 27, 2019

Events 15 and 16 are applicable to all outstanding debt once a CDU is executed after the effective date

### Event (15)

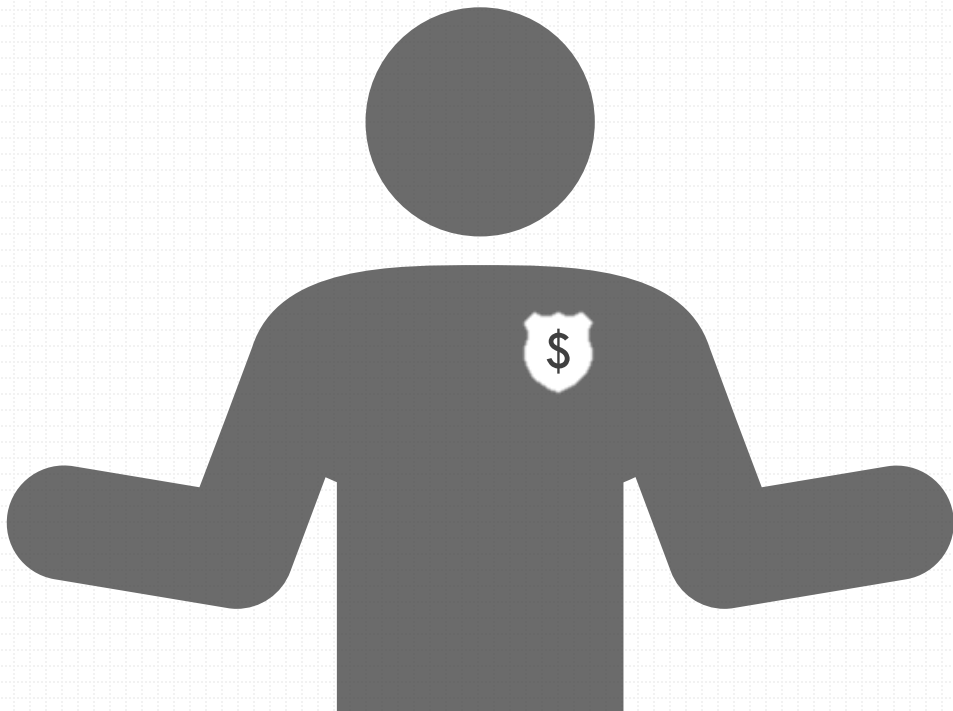
Incurrence of a “financial obligation” of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, **if material**.

### Event (16)

Default, event of acceleration, termination event, modification of terms or other similar events under a financial obligation of the obligated person, any of which reflect financial difficulties.



What was the purpose of the financial obligation amendments?



## **Purpose of Amendments**

Provide Investors with information in order to evaluate the impact of the financial obligation on the creditworthiness of the issuer.

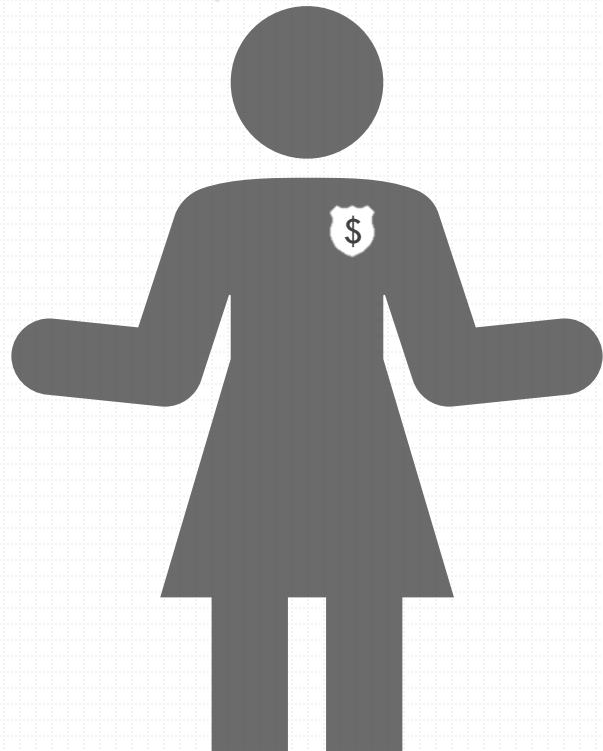
Institutional investors consistently raised significant concerns about issuers who entered into bank loans (i.e. private or direct placements) and did not disclose those bank loans to the market on a timely basis.

## **Examples**

Failure to disclose that bank loans had been incurred at all when those bank loans sometimes represented a material increase in the overall debt of the issuer.

Failure to disclose that bank loans had been incurred and failure to disclose the major features of the bank loans that negatively affected holders of bonds such as security terms, covenant and default terms, and other structural aspects of the bank loans that left public bondholders at a disadvantage to the bank lender.

How do I know what is or is not a reportable 'Financial Obligation'?



## Examples of What **IS** a Financial Obligation

- **Debt Obligations**
- **Direct purchase by an investor**  
Loan from a bank or government agency
- **Line of credit**
- **Lease** entered into to borrow money
- **Obligation that could effect:**  
Obligor's liquidity | Obligor's credit | Obligor's bondholders' rights
- **Derivative Instruments**  
Derivative instruments entered into in connection with, or pledged as security or a source of payment for, an existing planned debt obligation
- **Guarantees**  
Guarantee of a debt obligation or derivative instrument – includes self-liquidity and other contingent arrangements

## Examples of What is **NOT** a Financial Obligation

### **Ordinary financial and operating liabilities:**

Most equipment leases | Non-recourse leases | Vehicle fleet leases from dealer | Most rental leases | Vendor leases | Derivatives used to manage investment risk or commodities risk | Obligations arising from legal proceedings | Municipal securities offered using an Official Statement provided to the MSRB

## Financial Obligation Compliance Considerations

Do you have a sense of when an issuer incurs a financial obligation?

Do you have a sense of what and when financial obligations of the issuer are amended?

Do you have a way to monitor your outstanding financial obligations for defaults and similar events?

We agreed to a lot in the CDU. I'm glad we paid attention and understood what we were undertaking to during the issuance!



# 5

## END OF THE ISSUE

### **Refund or Redemption**

Most commonly, the outstanding debt is refunded, the current issue is redeemed and a new issue starts in the planning phase. Alternately, the bond could be paid off to complete the issue.

### **Record Retention**

Records should be kept for the life of issue plus three years.

# Refunding and Redemption

[CDIAC Debt Guide](#)

Sections 2.3.1 and 4.12

[GFOA Best Practices](#)

Refunding a Municipal Bond

This happens later than the issue,  
right? ...Perhaps much later?



Remember when we sold the bonds? There was a 'Call Date' in the structure? Remember?



## Refunding

### Call Date

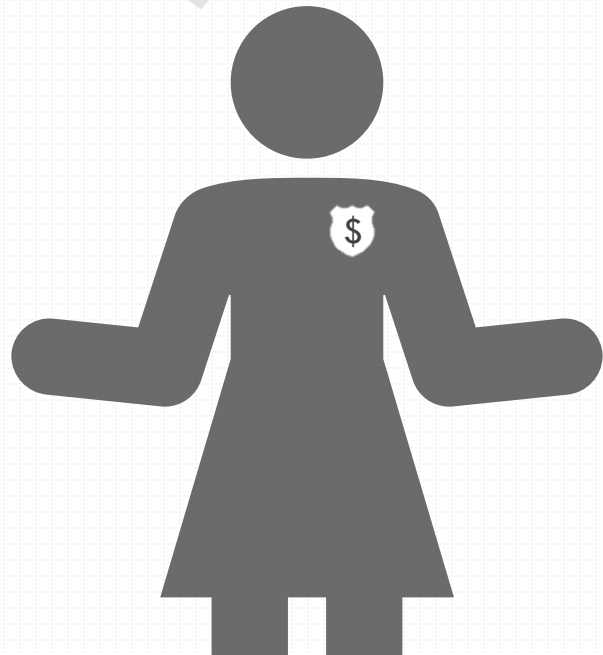
*aka Early Redemption*  
When you can refinance  
(refund) the debt

### Why would you do this?

### Current Versus Advance Refunding

2017 Tax Act made advance  
refundings illegal...but stay  
tuned.

Do bonds ever really mature...you know, end? If so, now what?



## Discharge and Defeasance

[CDIAC Debt Guide](#)

Section 2.4.1

**Did you pledge real property to secure the debt (lease revenue or COPs)?**

## Record Retention

[CDIAC Debt Guide](#)

Section 8.3.6

**Now that the bond is defeased, do we get to throw away the 'transcript'?**

# Questions and Answers



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