SESSION SEVEN

Ongoing District Administration

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Ongoing CFD Administration

- Calculate Annual Special Tax Levy
- Monitor and Manage Delinquencies
- Calculate Arbitrage Rebate Due to Federal Government
- Comply with Federal and State Disclosure Requirements
- Other Annual CFD Administration Responsibilities

Ongoing CFD Administration

Calculating the Annual Special Tax Levy

- Assign taxable parcels to appropriate special tax category
- Calculate “Special Tax Requirement”
  - Debt Service
  - Administrative Expenses
  - Pay-as-you-go Facilities Costs
  - Services Costs
- Apply RMA to determine special tax for each parcel
- Submit levy to Auditor’s Office before deadline (usually 1st week of August)
- With almost all CFDs, no action required from legislative body

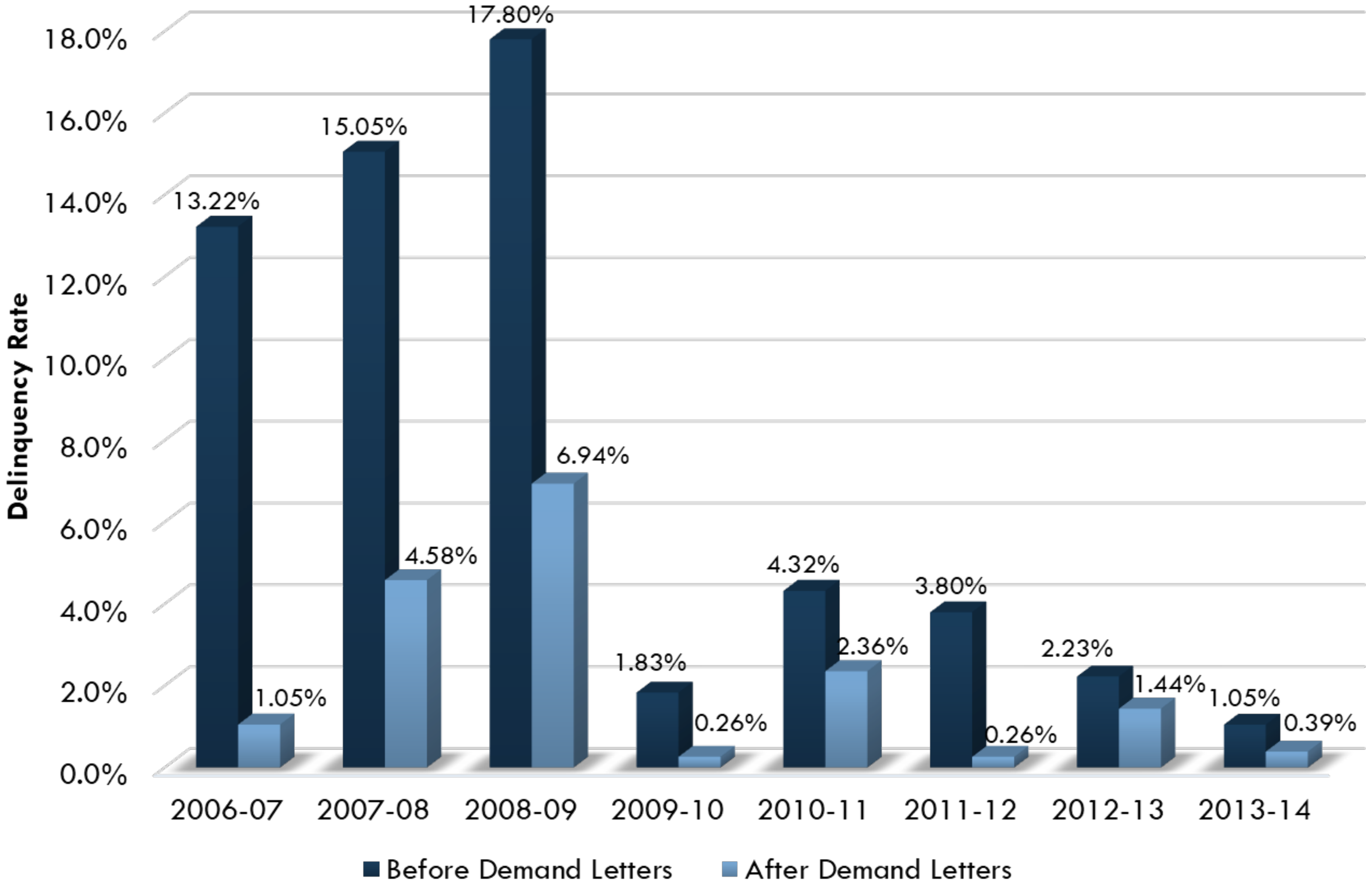
Ongoing CFD Administration

Delinquency Management

- Demand letters should be sent immediately after missed payments (For large tax payments, after both December and April installments)
- For homes in foreclosure, send demand letters to bank
  - Mello-Roos special tax lien is senior to mortgage lien
  - Accelerated foreclosure provision is an effective motivator
- Even in Teeter Plan counties, don't wait to act
  - Cumulative delinquencies are harder to remedy
  - Land-secured districts can be removed from Teeter at any time
- Strip Mello-Roos taxes if homeowner cannot pay full tax bill
- Inform Tax Collector that payment plans will not work for special taxes and assessments

Managing Special Tax Delinquencies

Sample of Central Valley CFDs during Great Recession



Ongoing CFD Administration

<u>Arbitrage Rebate Calculations</u>

- “Positive arbitrage” occurs when interest rate earned on bond proceeds is greater than interest rate paid on bonds
- Every 5 years, earnings must be rebated to the Internal Revenue Service within 60 days after end of 5th year
- Doing an annual calculation avoids trying to collect large amount in fifth year, which may be impossible within maximum tax rates
- Applies to proceeds from bond issue. Does not generally apply to PayGo revenues.

Disclosure Obligations

SEC regulatory mandate

- Market transparency for investors
- SEC doesn't directly regulate municipal issuers except for anti- fraud statutes.
- SEC *compels* municipal reporting by requiring underwriter to secure agreement per SEC Rule 15c2- 12(b)(5)

Continuing disclosure agreement

- Issuer promises ongoing information for investors to monitor value of the security

SEC Focus on MCDC

Securities Exchange Act of 1934
Rule 10b-5:

"It shall be unlawful for any person. . .

(a) to employ any device, scheme or artifice to defraud,

(b) 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 light of the circumstances under which they were made, not misleading. . ."

=> Applies to any circumstance where a municipal bond issuer is "***speaking to the market***," including when filing annual Continuing Disclosure Reports or Event Notices.

Continuing Disclosure Commitment

Continuing Disclosure Agreement

- Form included in Preliminary Official Statement sent to investors
- Executed at bond closing

Ongoing Reports

- Timing specified in agreement
- Annual audited financial statements
- Certain updates to information in the Official Statement

"Material Events" Reporting

- Within 10 days of occurrence

CDIAC Reports

Material Events

- Delinquent payment of principal or interest
- Unscheduled draws on debt service reserve funds
- Unscheduled draws on credit enhancement
- Substitution of credit or liquidity providers, or their failure to perform
- Tender offers
- Defeasance of the Bonds
- Rating changes
- Bankruptcy, insolvency, receivership or similar event of obligated person
- Other events - if material

Annual Reporting

- **SEC Rule 15c2-12 (Continuing Disclosure)**
  - Obligated persons: Issuer and Developer
  - Annual/semi-annual/quarterly reports and notice of listed events
  - File on the EMMA System of the Municipal Securities Rulemaking Board
- **California Debt and Investment Advisory Commission**
  - Yearly Fiscal Status Report: October 30 deadline
  - Annual Debt Transparency Report: Jan. 31 deadline
  - 10-day significant event reporting: form provided
- **State Controller's Office**
  - AB 2109 Parcel Tax Reporting: included in Financial Transactions Report
- **Local Agency Special Tax & Bond Accountability Act (SB 165)**
  - Report filed with Clerk each year
  - CFD Administration Report will suffice
- **Assembly Bill 1483**
  - Requires public agencies to post on website a current schedule of fees, exactions, and affordability requirements imposed on housing developments
  - Special taxes <u>are</u> an exaction and must be posted
  - Information must be updated within 30 days of any changes, including annual escalation of special taxes

IRS Spending and Tracing Requirements for Municipal Bond Proceeds

Investment of bond proceeds

- Must be consistent with permitted investments set forth in Indenture/Fiscal Agent Agreement, issuer's investment policies and IRS Regulations

Bond proceeds are subject to Arbitrage calculation/rebate:

- Calculate and pay arbitrage rebate every 5 years, if any
- Only applicable if investment earnings exceed bond yield
- Various exceptions to arbitrage rebate available for:
  - Bona fide debt service funds
  - Construction funds
    - 6-month expenditure
    - 18-month expenditure
    - 24-month expenditure

IRS Spending and Tracing Requirements for Municipal Bond Proceeds

Bond proceeds transferred to other agencies pursuant to Joint Community Facilities Agreements must be traced as well.

- Preferable not to disburse bond proceeds to other public agencies except for reimbursement

Bond proceeds should be traced for the term of the bonds plus 3 years.

IRS spend down requirements for new money bond proceeds in the construction fund:

- 3-year temporary period (85% rule)
- 5-year hedge bond rules
  - Year 1 = 10%
  - Year 2 = 30%
  - Year 3 = 60%
  - Year 5 = 85%

Other Annual CFD Administration Responsibilities

- Reconcile bank statements from fiscal agent/trustee
- Prepayment calculations
- Record releases of special tax lien
- Disbursing/investing bond proceeds
- Acquisition of facilities
- Answer questions from homeowners, appraisers, realtors, bond investors

Consultants or Staff?

Considerations

- Experience of staff
- Existing workload
- Number of CFDs formed by agency
- Complexity of CFDs
- Combined Approach