

# SESSION ONE

## Overview of Issuer Responsibilities Post-Issuance



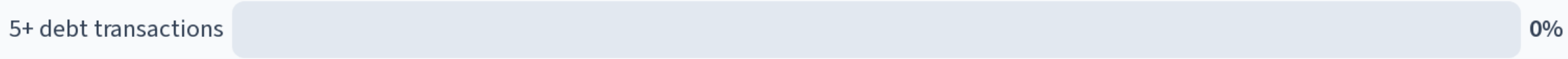
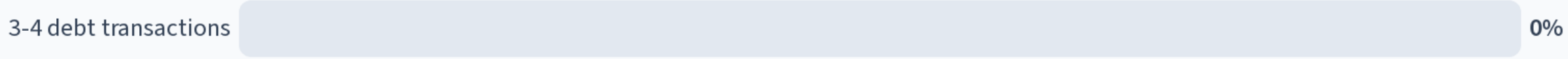
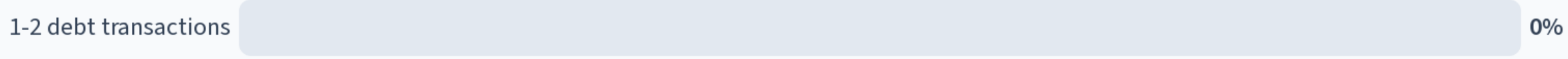
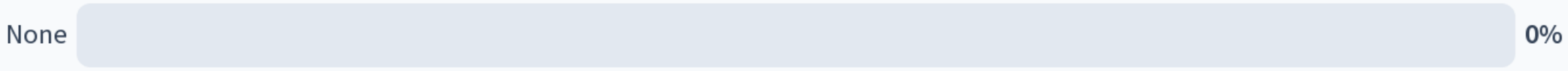
**JYOTHI PANTULU**  
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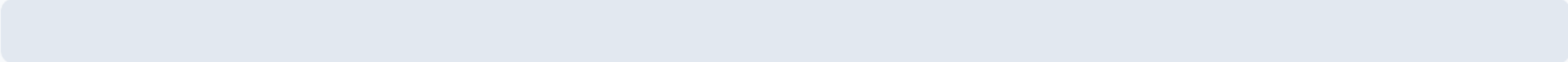
# Please tell us how many debt transactions you have been involved with in the last five years

👍 0



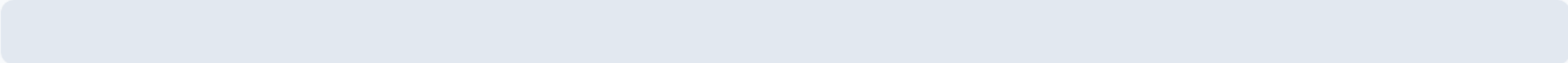
# Please tell us how long you have worked in public finance

Less than 1 year



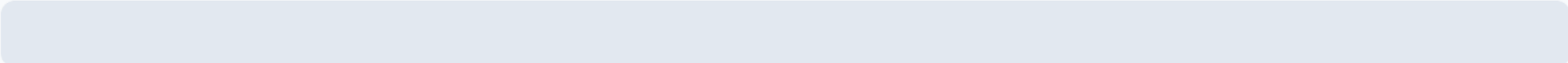
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1-2 years



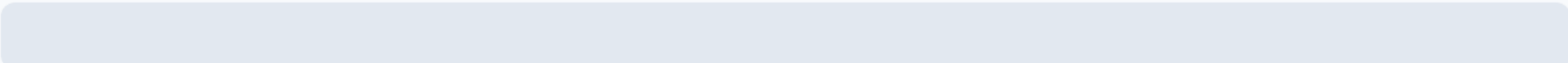
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3-4 years



0%

5+ years



0%

# Please select the most prominent type of credit your agency issues or is looking to issue

👍 0

Revenue 0%

General Obligation 0%

Special Districts/Tax Increment 0%

All of the above 0%



# Now That You've Priced the Bonds....

- Typically, 14-30 days between pricing and closing
- During this time:
  - Lawyers are finalizing all legal documents, including the Official Statement (offering document) to reflect the pricing of the transaction
    - Changes/adjustments cannot be material to the deal
    - If material, must sticker the O/S
  - Team reviews all closing documents
  - Arrange for all documents to be signed, typically the day before actual closing
  - Morning call to confirm receipt of funds and release of bonds to DTC
  - You should be preparing for what's next



# What Is Next...

- A. YOU'RE TOTALLY DONE AND CAN GO BACK TO YOUR REGULAR JOB?
- B. TAKE THE REST OF THE DAY OFF?
- C. GO FISHING/PLAY PICKLE BALL?
- D. NOW THE REAL WORK BEGINS?

# Reality Sets In

- YOU'RE BASICALLY ON YOUR OWN
  - Underwriters have moved on to their next transaction
  - Bond/Disclosure Counsel have also moved on
  - Financial Advisor has basically moved on

**So, who does that leave?**



# What Do You Need To Be Thinking About?

- Paying bills
- Setting up accounts
- Recording the transaction in your general ledger
- Monitoring
  - Cashflow
  - Proper use of funds
  - Timing on the use of funds
- Reporting
  - EMMA
  - CDIAC
  - Governing Board





# What To Do With All This Money?

- Proceeds are received by the Issuer or Trustee
  - Trustee allocates funds between various accounts
    - Cost of Issuance
    - Construction
    - Bond Reserve
- Pay cost of issuance as invoices are received
- Determine how to invest proceeds
  - Reserve Funds
  - Construction Funds
- Let appropriate departments know that funds are available



# Understand Your Responsibilities

- To the Regulators
  - IRS and SEC
  - MSRB
    - Regulates Underwriters and Municipal Advisors
    - What do I do with the disclosure letters?
      - MSRB Rules G-17, G-42
- CDIAAC Reporting
  - Report of Proposed Issuance
  - Report of Final Sale
  - New Annual Debt Transparency Report
- Under the indenture, tax certificate and continuing disclosure agreement



# Understand Your Responsibilities

- (cont. 2 of 3)

- Proper use of the bond funds
  - Capital purposes
  - Projects listed
  - Like projects allowed
  - Proceeds expended in a timely manner within the tax certificate
- Properly Invested
  - Permitted investments within bond documents
  - Permitted investments within your investment policy
- Arbitrage Rebate reports prepared during the required timeframes
- Timely debt service payments
  - Include debt service in the budget
  - Monitor your cash flows to ensure adequate funds are on hand for payment



# Understand Your Responsibilities

- (cont. 3 of 3)

- Setting your proper rates
- Coordinating of project payments or bond draws with the Trustee
  - Use of the proper form
  - Attach appropriate documentation
  - Time your bond draws with cash needs
- Record Keeping
  - Accurate accounting
    - Make sure that the closing transaction is properly set up
  - Financial Statements
    - Notes to the financial statements related to debt service
  - Tracking bond payments
    - Keep track of your payments per each bond issue with details for the individual bond draws and cumulative totals. These totals should reconcile with your Trustee statements.

# GET YOURSELF ORGANIZED

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- Review your Debt Policy
- Establish a tickler system with dates & responsibilities:
- Debt service payments
- Continuing disclosure filings
  - Arbitrage rebate obligations
  - Spending timelines
  - Yield restrictions
  - Use of proceeds

# GET YOURSELF ORGANIZED

– (cont. 2 of 3)

- Know what's in your Continuing Disclosure Agreements (CDA)
- Annual filings and event filings
- Identify responsible officials
- Awareness of events that trigger a filing
  - Events that always require notification
  - Events that require notification, if material
- Events added for CDAs entered into on or after February 27, 2019
  - Financial Obligations – incurrence
  - Financial Obligations – event reflecting financial difficulty

# GET YOURSELF ORGANIZED

– (cont. 3 of 3)

- Searchable database of trigger events
  - Rating changes
  - New debt or SWAP
  - Document amendments
  - Bankruptcy
  - Legislation
  - Major judgment
  - Late payment/nonpayment
  - Late filing
- Backup planning



# Post-Issuance Best Practices

- Understand federal and state muni tax and securities requirements
- Develop disclosure policies and procedures to ensure compliance and peace of mind
  - Formal, written, adopted
  - Review update at least every three years
  - Use assistance of outside professionals if desired (municipal advisor, counsel)
- Elements
  - List of all compliance actions at time bonds are sold – by series
  - Documentation of sources and frequency of requirements
  - Identify and assign responsibilities by title





# Post-Issuance Best Practices

- (cont. 2 of 2)

- Elements
  - Create policies and procedures that reflect who you are
  - Determine if outside vendor may be of assistance
  - Monitor changes in laws and regulations
  - Identify records to be maintained, for how long and how to maintain
  - Train responsible employees
  - Determine how to identify and correct mistakes
  - Other considerations
    - Bond Indentures/Bond Ordinance/Bond Resolution
    - Other internal finance policies and how they relate to debt management and post issuance compliance

# Post-Issuance Tax Compliance

- Remember all those documents you signed at closing?
  - You now have a legal (and moral) obligation to comply
- Record retention
- Arbitrage and yield restriction
- Correct expenditure of proceeds
- Tracking use of proceeds
- Understanding and monitoring private use
- Remedies when things go sideways (call counsel, IRS VCAP program)



# Record Retention

- General rule: life of the bonds plus three years
  - If new money bonds are refunded, extends to life of refunding bonds plus three years
- What do you keep?
  - Basic records relating to the bond transaction
  - Documents evidencing the expenditure of bond proceeds
  - Documents evidencing the use of bond-financed property by public and private sources
  - Documents evidencing all sources of payment and security of the bonds
  - Documents pertaining to the investment of bond proceeds
- How do you keep it?
  - IRS Electronic storage guidelines



# Your Relationship With Your Trustee

- While most of your team moves on to their next deal, you and the Trustee are actively involved for the life of the bonds
- Select your Trustee based upon **experience, professionalism and resources**, not just price
- Trustee performs administrative functions on your behalf which directly reflects on you and your agency and the bond holders
- Selection of the Trustee should begin prior to the closing and as early in the document review process as possible



# Your Relationship With Your Trustee

– (cont. 2 of 2)

## WHAT SKILLS SHOULD THEY POSSESS?

- Legal knowledge and document review skills
- Understanding of investments and settlement process
- Accounting skills
- System knowledge
- Communication skills
- Organization skills
- In general, they should possess a wealth of information related to your bond issue
- Get them to share this knowledge with you

# It's Now Time For Arbitrage Calculation

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- Arbitrage is the ability to earn profit by capitalizing on differences between investments or markets
- In the case of public finance, Arbitrage refers to ability to profit from investment of tax-exempt bond proceeds in taxable securities
- The ability to earn arbitrage depends on the relationship between taxable and tax-exempt rates and the shape of the yield curve
- Positive arbitrage represents earnings above the arbitrage yield. Negative arbitrage represents earnings below the arbitrage yield (i.e., “losses”)

# Arbitrage Rebate Compliance Activities

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- Internal monitoring of rebate compliance
- Recommend annual calculations during construction period
  - Set aside annual rebate liability in Rebate Fund
  - Get it out of the Construction Fund
- Paying rebate is not bad, just need to monitor and pay as required
- Pay attention to requirements in Tax/Arbitrage Certificate

# When is Rebate Calculated?

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## **REQUIRED:**

- Every five years, and on Final Maturity
- Refunding Triggers New Final Maturity
- 8038-T: Only file if rebate is owed
- When required by bond indenture

## **RECOMMENDED:**

- Annually during construction period





# Accounting & Expenditure of Proceeds

- Reasonable expectations vs. actual facts – are you spending funds on correct items?
- General Accounting
- Best Practice: Open communication with those responsible for spending the money
- Reallocation of bond proceeds
- Tracking proceeds

# Private Use/Payment Tests

**PRIVATE BUSINESS USE TEST:** No more than 10% of the proceeds of the bonds can be used for Private Business Use

**PRIVATE PAYMENT TEST:** No more than 10% of the payment of principal or interest on the bonds is made or secured by payments for Private Business Use

- BOTH tests must be “met” in order to have Private Activity Bonds
- Live and learn: the federal government is treated as a PRIVATE party

**Be sure to talk with bond counsel about existing and changing federal tax laws**



# Other Compliance Issues

- Bond Indenture Requirements/Covenants
  - Coverage Ratios
  - Progress Reports/Financial Reports
  - Additional Bonds Tests
- Debt Policy Requirements

# QUESTIONS?



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