

Private Activity Bonds for Local Officials

Issuing Private Activity Bonds

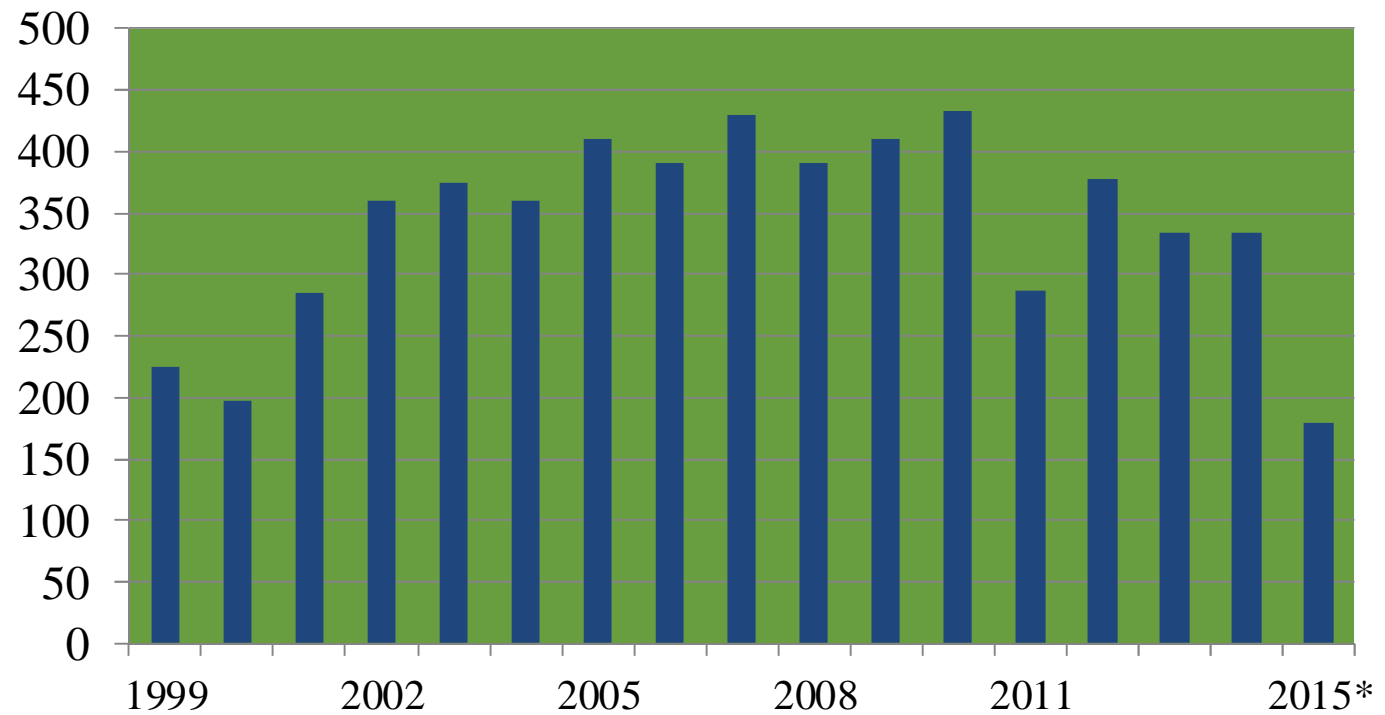
July 2015

Presentation By:

Kutak Rock LLP

Tax Exempt Bond Market

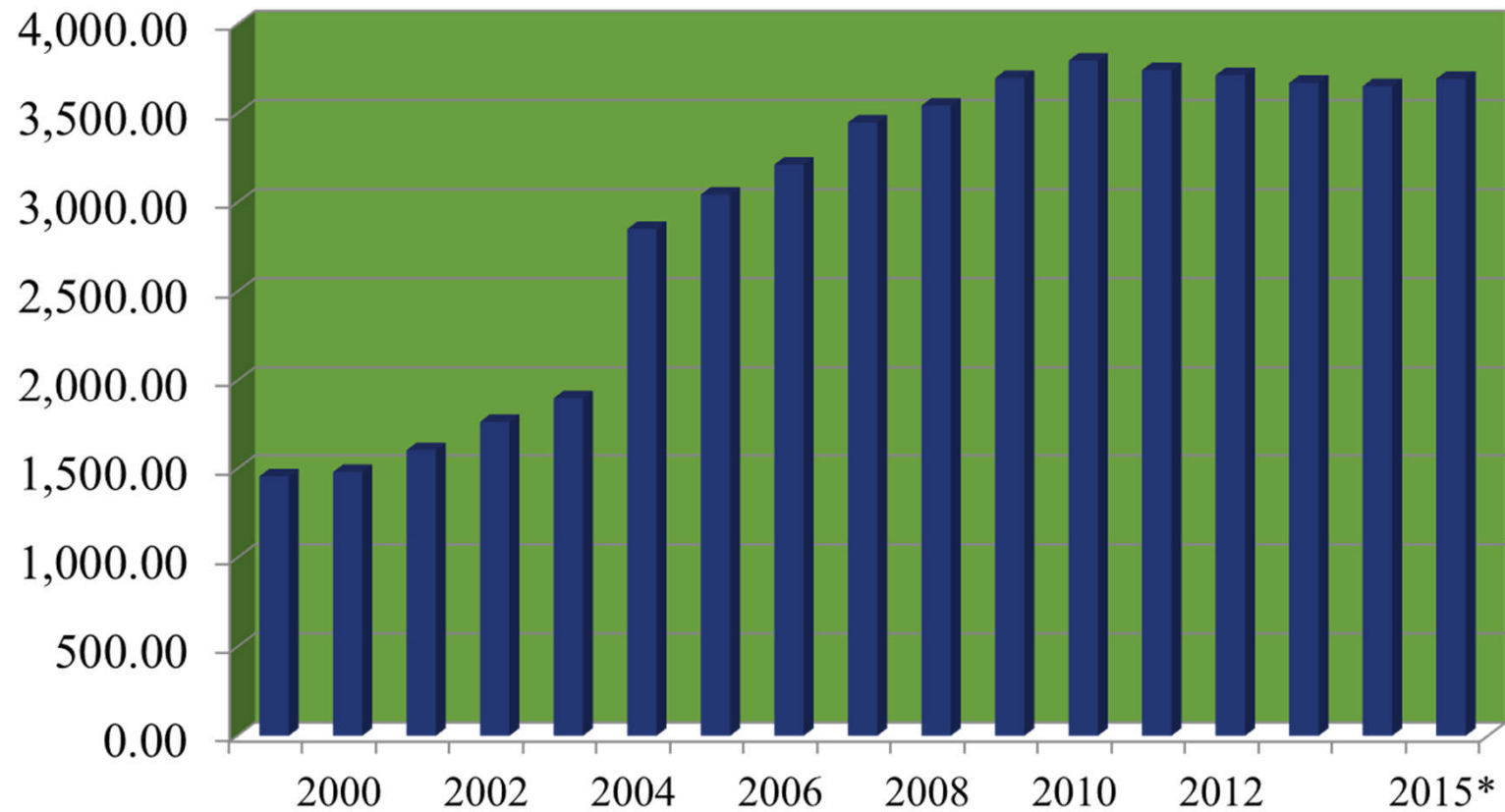
Annual Bond Sales



*2015 = January-May
Source: The Bond Buyer

Tax Exempt Bond Market

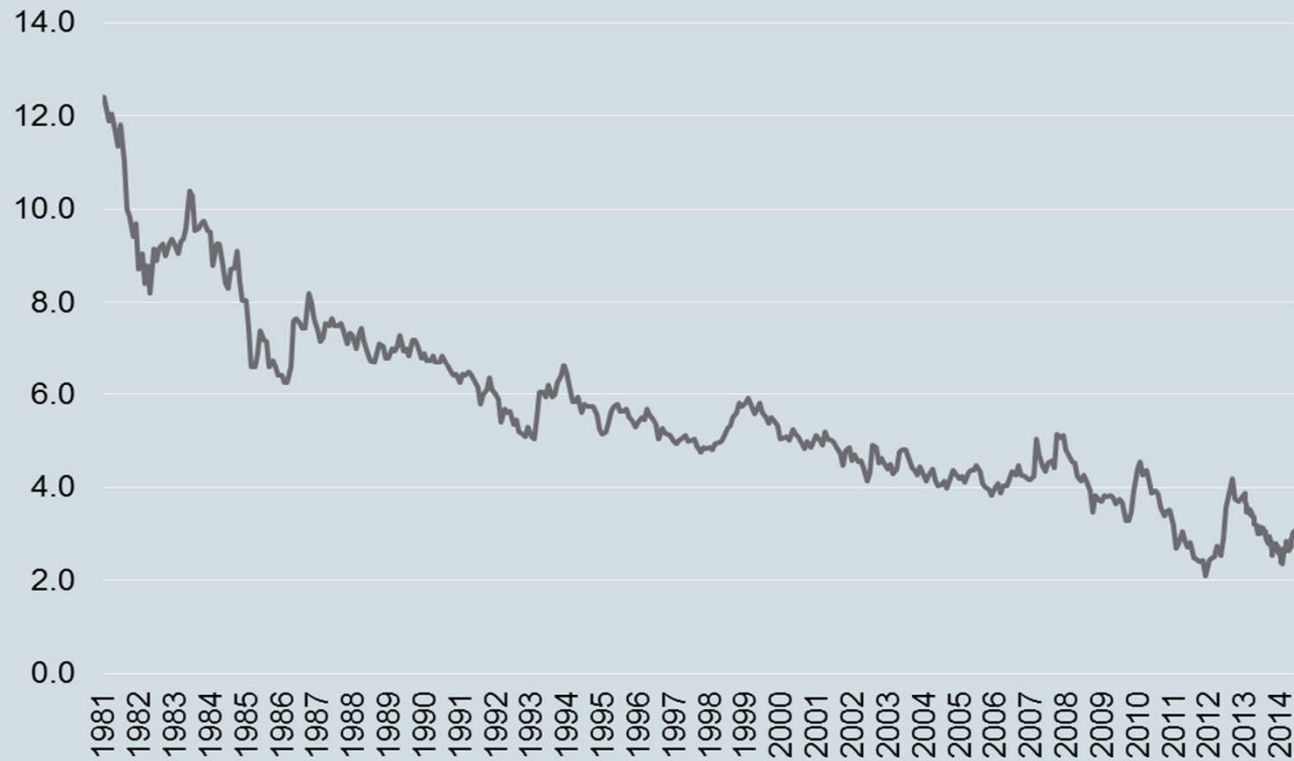
Holder of Bonds



*First Quarter 2015
Source: The Bond Buyer

History of the 20-year “AAA” MMD

Tax-Exempt Benchmark Yield - 20 YR AAA MMD GO Bond Since 1981 (%)



Source: D.A. Davidson & Company

Types of Private Activity Bonds

Table 2. Qualified Private Activities

Internal Revenue Code Section	Type of Private Activity (Italicized activities must be owned by the issuing government to qualify)	Subject to Volume Cap	Year Established
Sec. 142	Exempt facility bonds		
Sec. 142(c)	<i>Airports</i>	No	1968
Sec. 142(c)	<i>Docks and wharves</i>	No	1968
Sec. 142(c)	<i>Mass commuting facilities</i>	Yes	1981
Sec. 142(e)	Water furnishing facilities	Yes	1968
Sec. 142(a)(5)	Sewage facilities	Yes	1968
Sec. 142(a)(6)	Solid waste disposal facilities	Yes/No ^a	1968
Sec. 142(d)	Qualified residential rental projects	Yes	1968
Sec. 142(f)	Local electric energy or gas furnishing facility	Yes	1968
Sec. 142(g)	Local district heating and cooling facilities	Yes	1982
Sec. 142(h)	Qualified hazardous waste facilities	Yes	1986
Sec. 142(l)	High-speed intercity rail facilities	Yes ^b	1988
Sec. 142(j)	<i>Environmental enhancements of hydroelectric generating facilities</i>	No	1992
Sec. 142(k)	Qualified public educational facilities	No ^c	2001
Sec. 142(l)	Qualified green building and sustainable design projects	No ^c	2005
Sec. 142(m)	Qualified highway and surface freight transfer facilities	No ^c	2005
Sec. 143	Mortgage revenue bonds		
Sec. 143(a)	Qualified mortgage bond	Yes	1968
Sec. 143(b)	Qualified veterans' mortgage bond	No	1968
Sec. 144(a)	Qualified small issue bond	Yes	1968
Sec. 144(b)	Qualified student loan bond	Yes	1976
Sec. 144(c)	Qualified redevelopment bond	Yes	1968
Sec. 145	Qualified 501(c)(3) bond	No	1968

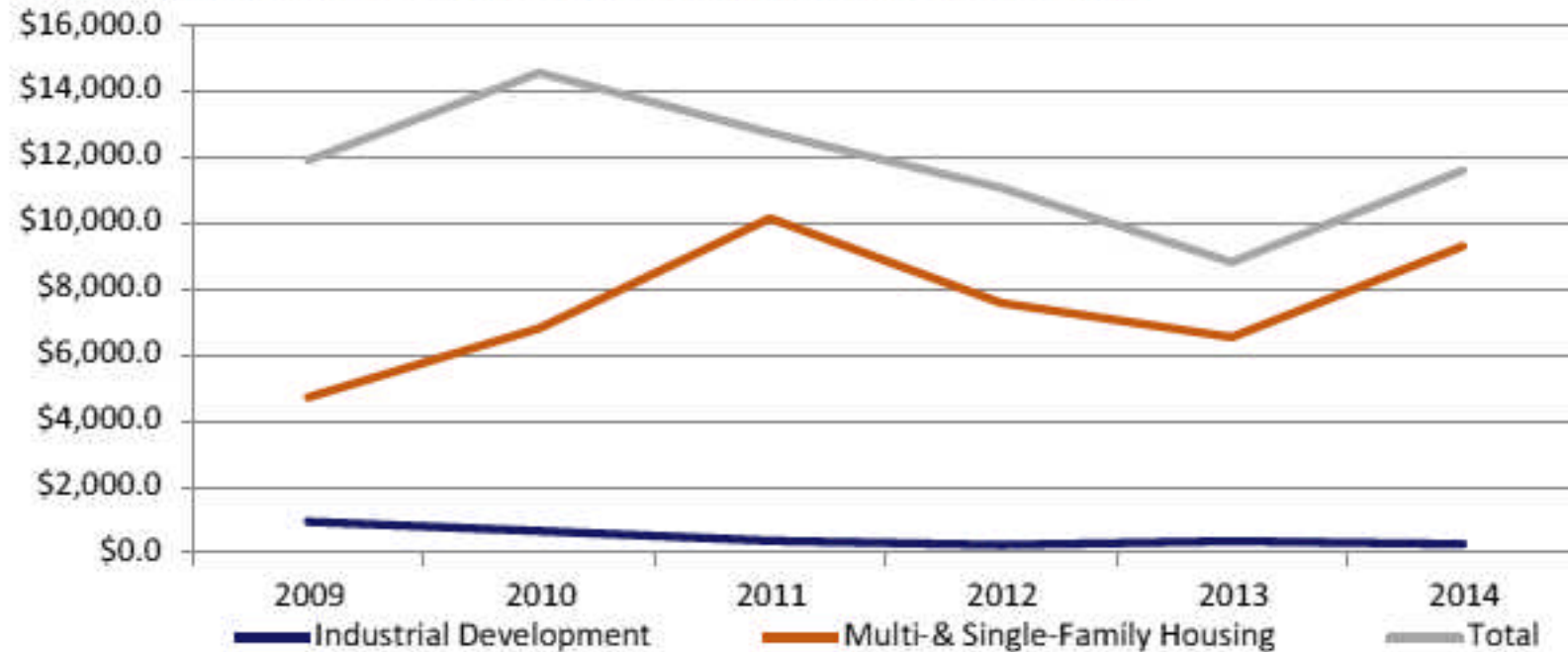
- a. Exempt from the cap if governmentally owned. Subject to the cap if privately owned.
- b. 25% of the bond issue is included in the cap. If the facility is owned by a governmental unit, no cap allocation is required. In addition, if the facility is not governmentally owned, to qualify for tax-exempt status, the owner must elect not to claim any depreciation deductions or investment tax credits with respect to the property financed with the bonds.
- c. Educational facility bonds are subject to a separate cap: the greater of \$10 per capita or \$5 million. Green building bonds are subject to a national aggregate amount of \$2 billion through the expiration of the program, scheduled for October 1, 2009. Highway bonds are subject to the following annual issuance limits: \$130 million in 2005; \$750 million each year for 2006 through 2009; \$1.87 billion in 2010; and \$2 billion each year for 2011 through 2015, zero thereafter.

Source: Congressional Research Service: RL31457, June 9, 2006

Note: Additional private activity bonds also include: qualified enterprise zone facility bonds, qualified empowerment zone facility bonds, District of Columbia enterprise zone facility bonds; qualified New York liberty bonds and qualified 501(c)(3) bonds.

National Private Activity Bond Issuance

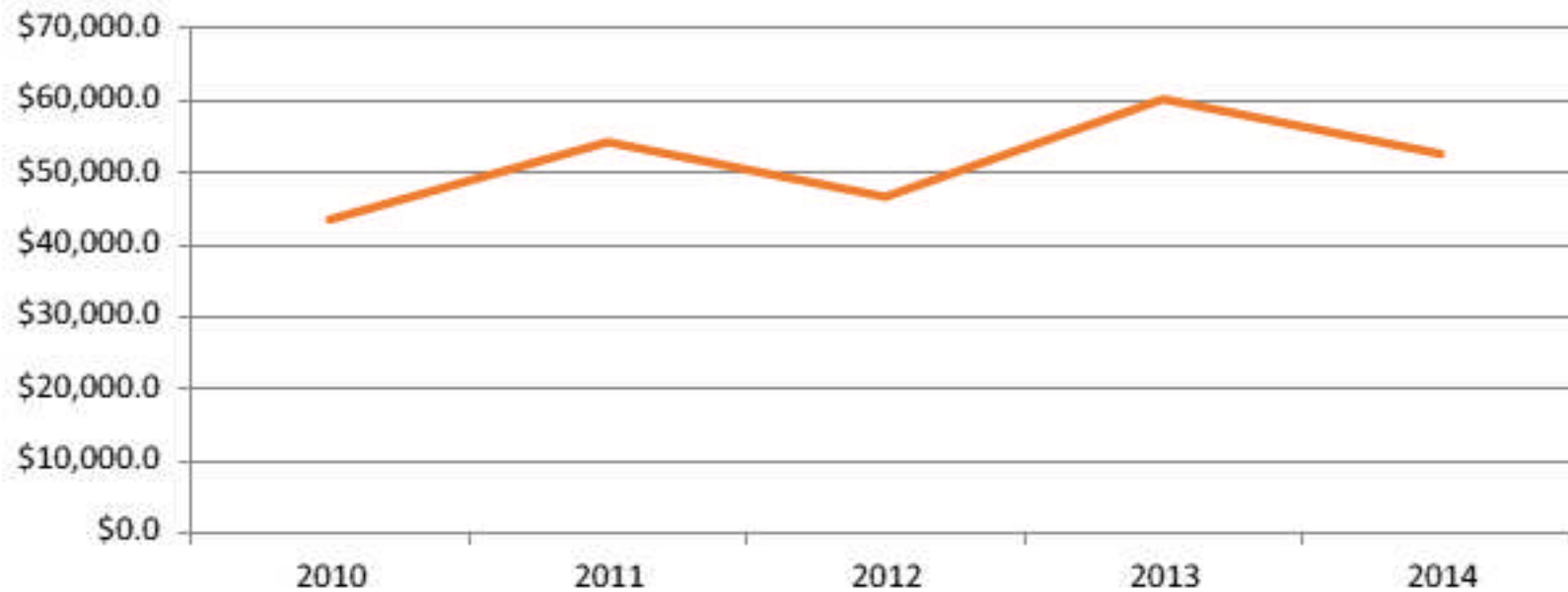
Figure 1. National Private Activity Bond Issuance in Millions of Dollars



Source: CDFA Annual Volume Cap Report, July 2015

National Volume Cap Carryforward

Figure 2. National Carryforward in Millions of Dollars



Source: CDFA Annual Volume Cap Report, July 2015

Industrial Development Bonds Volume

Table 1. Top States by 2014 Issuance of Industrial Development Bonds

State	Millions of IDB Issuance
Illinois	\$39.3
Massachusetts	\$26.3
Georgia	\$25.9
Wisconsin	\$20.4
Minnesota	\$16.0
New York	\$15.5
California	\$15.3
Missouri	\$14.0
Iowa	\$12.7
Kentucky	\$12.5

PAB Volume By Type

Table 2. Private-Activity Bond Volume by Type of Activity in 2012 and 2013

Capacity Allocation	Allocation in Billions		Percent of Capacity Available	
	2012	2013	2012	2013
Total Volume Capacity Available	\$79,295.00	\$87,223.50	100.00%	100.00%
New Volume Capacity	\$32,469.10	\$32,748.30	40.95%	37.55%
Carry Forward from Previous Years	\$50,611.10	\$56,445.30	63.83%	64.71%
Total Carryforward to Next Year	\$46,678.70	\$60,220.00	58.87%	69.04%
Total PABs Issued	\$11,088.80	\$8,824.30	13.98%	10.12%
Single-family Mortgage Revenue	\$2,654.40	\$1,828.20	3.35%	2.10%

PAB Volume By Type

Capacity Allocation	Allocation in Billions		Percent of Capacity Available	
	2012	2013	2012	2013
Multi-family Housing ^a	\$5,003.90	\$4,722.30	6.31%	5.41%
Mortgage Credit Certificates	\$2,564.70	\$3,441.20	3.23%	3.95%
Exempt Facilities	\$7,391.30	\$6,076.00	9.32%	6.97%
Other Activities	\$30.10	\$84.20	0.04%	0.10%
Student Loans	\$772.00	\$480.20	0.97%	0.55%
Industrial Development	\$240.40	\$355.80	0.30%	0.41%
Abandon Capacity	\$6,604.80	\$11,751.60	8.33%	13.47%

Source: "CDFA's 2013 Annual Volume Cap Report," July 2014; and "CDFA's 2012 Annual Volume Cap Data," July 2014. The data are available at <http://www.cdfa.net/>.

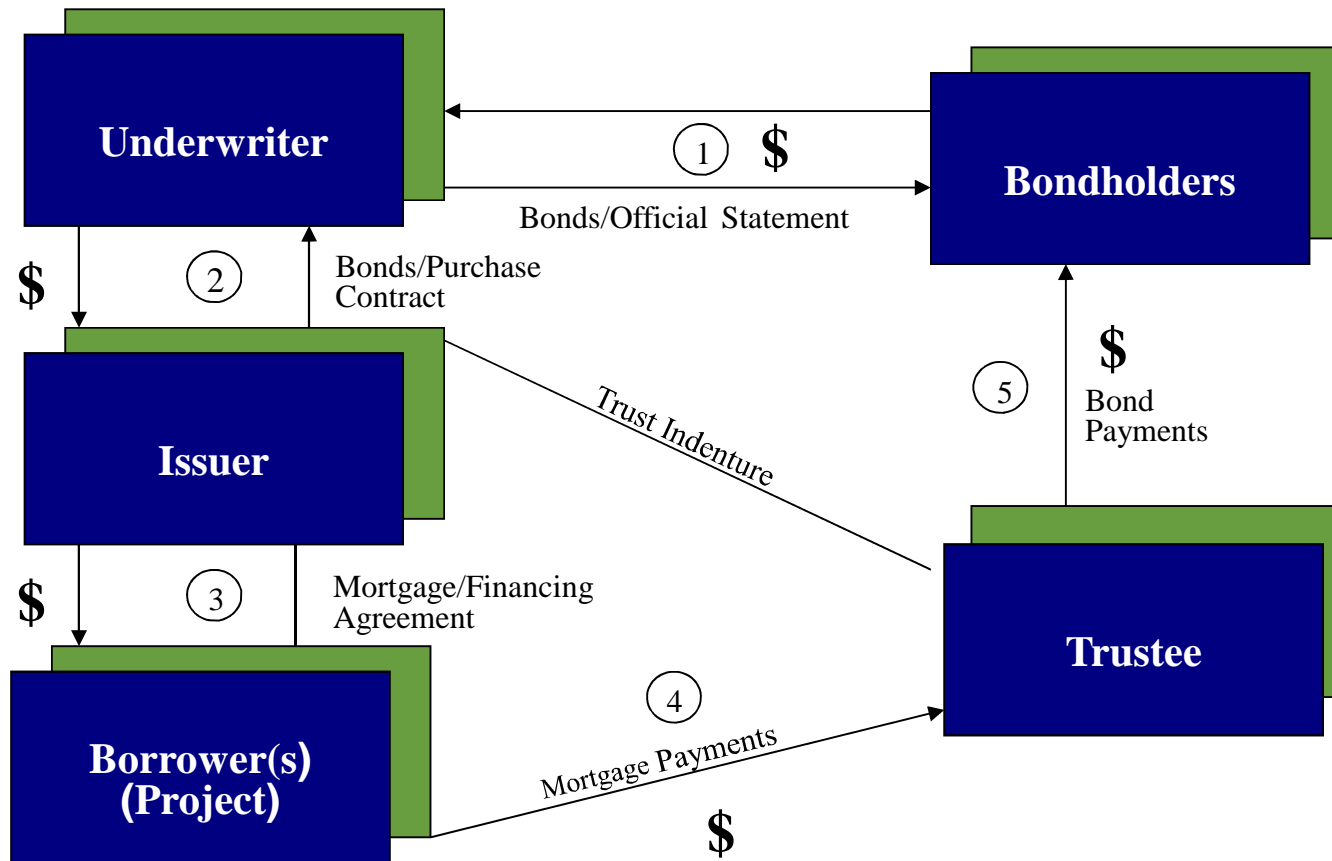
- a. Multifamily housing bonds are an allowable use of exempt facility bonds and are also included in the "Exempt Facility" category.

Steps for a Typical Bond Issuance

- Step 1** - Issuer analyzes proposed issue with Borrower, Financial Advisor, Bond Counsel and Underwriter.
- Step 2** - Issuer adopts a resolution stating its intention to proceed with the financing and to formally engage members of the financing team. If required, Issuer applies for State Volume Cap Allocation.
- Step 3** - Drafting is begun on the bond documents and offering documents (the Preliminary Official Statement). Cash flows and documents are sent to rating agencies. Rating agency discussions or investor meetings take place.
- Step 4** - Financing structure and documents are finalized. State Volume Cap Allocation is received and TEFRA hearing is held by Issuer. Parameter Bond Resolution is adopted.
- Step 5** - Preliminary Official Statement is mailed; Bond issue terms are discussed among the Issuer, Borrower, investors and the Underwriters.
- Step 6** - Bonds are offered by the Underwriters to investors. Bonds are underwritten at interest rates and terms agreed to by the Issuer and Borrower. Bond Purchase Agreement is executed among the Issuer, Borrower and Underwriters.
- Step 7** - Bond issue is closed. Underwriters wire bond purchase price to Trustee and take delivery of Bonds.
- Step 8** - Bond proceeds are available to be spent by Borrower.

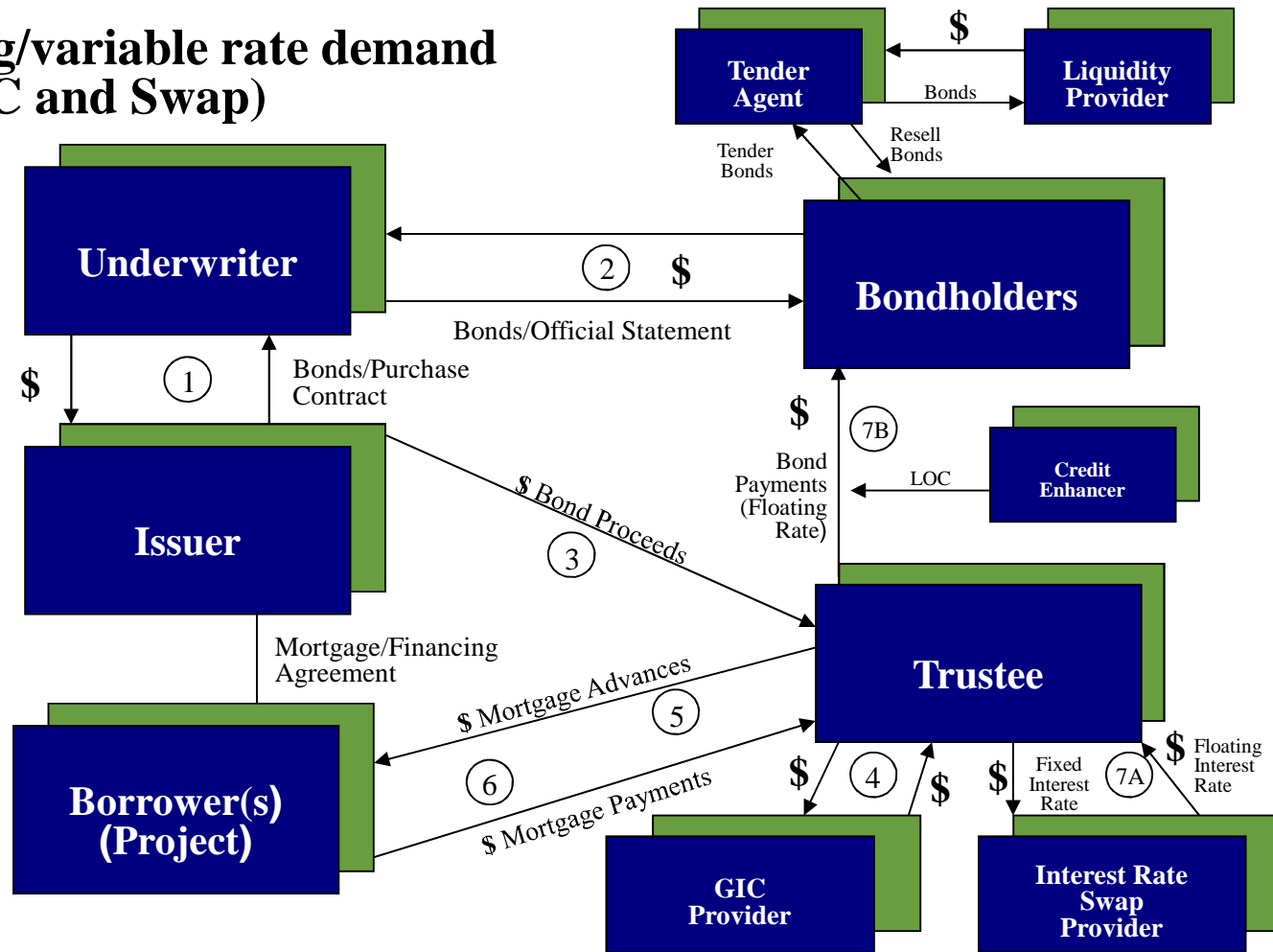
BOND ISSUE

(Simple fixed rate)



BOND ISSUE

(Floating/variable rate demand with GIC and Swap)



Parties to Transaction

- ▶ Issuer
- ▶ Borrower
- ▶ Underwriters
 - Senior Manager
 - Co-Managers
 - Sales & Trading
- ▶ Financial Advisor
- ▶ Bond Counsel
- ▶ Disclosure Counsel
- ▶ Underwriters' Counsel
- ▶ Issuer's Counsel
- ▶ DTC
- ▶ Rating Agencies
- ▶ Trustee
 - Paying Agent/Registrar
 - Authenticating Agent
- ▶ Bondholders
 - Retail
 - Bond Funds
 - Institutional Investors
 - Direct Purchaser
- ▶ Credit Enhancer
- ▶ Liquidity Provider
- ▶ GIC Provider/Broker
- ▶ Swap Provider/Advisor
- ▶ CPAs

Documents

- ▶ Loan Agreement
- ▶ Trust Indenture
- ▶ Resolution/Ordinance
- ▶ Tax Regulatory Agreement
- ▶ No Arbitrage Certificate
- ▶ IRS Form 8038
- ▶ Official Statement
- ▶ Bond Purchase Agreement
- ▶ Opinions
 - Bond Counsel
 - Disclosure Counsel
 - Issuer's Counsel
 - Borrower's Counsel

- ▶ Credit and Liquidity Agreements
- ▶ Continuing Disclosure Undertaking
- ▶ GICs and Swaps
- ▶ Collateral Security Documents
- ▶ Third Party Reports
 - Feasibility Report
 - Phase I Environmental Report
 - Title Insurance
 - Survey
 - Appraisal
 - Engineer's Report

Miscellaneous Stuff

- ▶ Tax Reform
- ▶ Derivatives
- ▶ Blue Sky
- ▶ Repeal of Tower Amendment
- ▶ Lore vs. Law
- ▶ Bond Politics
- ▶ Things that go bump in the night
 - Defaults
 - IRS Audits
 - Change in Use
 - Post Issuance Modifications and Reissuance
 - “Market Dislocations”

This Just In

- ▶ SEC MCDC Initiative
- ▶ Municipal Advisor Regulation
- ▶ MSRB Rule G-17 – SEC Interpretive Notice Relating to Role of Underwriters
- ▶ MSRB Rule G-34 – Liquidity Facility Disclosure
- ▶ SEC Enforcement Actions
- ▶ SEC Investor Alert Relating to Broker-Dealer Due Diligence
- ▶ IRS Report – Avoiding Troubled Tax-Advantaged Bonds
- ▶ IRS Conduit Issuer Publication
- ▶ GAO Report/SEC Report on Municipal Market Place
- ▶ Post Issuance Compliance Policies and Procedures

Questions?

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