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Exploring 501c3 Bond Finance for  
Nonprofit Organizations



**BNY MELLON**



# Exploring 501c3 Bond Finance for Nonprofit Organizations



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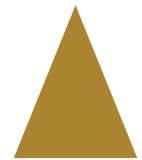
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# LEGAL ISSUES FOR 501(C)(3) FINANCINGS

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# Development Authorities as Conduit Issuers for 501(C)(3) Financings

EDA has a Critical Role in Issuing Bonds for Charitable Entities:

- Private Schools
- Headquarters
- Recreational Facilities (YMCA's)
- Health Care Facilities – hospitals, senior living communities

These Facilities are Important in Building the Fabric of a Live-Work-Play Community  
Fewer Constraints than those Facing Manufacturing Small Issue Bonds

# Approval Process - TEFRA

- Public Hearing – typically held by Authority. Inducement resolution
- Issuer locality approval – governing body approval following public hearing by the authority.
- Host locality approval – where the financed facilities are located. May be separate from the issuer locality.

# Who can issue?

- Some nexus to the host locality.
- Forum shopping for BQ.
- What is BQ? – Internal Revenue Code 265(b)(3). May improve rate for bank placements

# EDA Fees

Aggregate annual fees to governmental entities capped at  $1/8^{\text{th}}$  of 1% of the outstanding principal amount – safe harbor for “materially higher” yield for purpose investments under Internal Revenue Code.

- ongoing fees by host locality counts toward this!

# The Credit

- Most governmental entities have authority to donate funds to non-profits, but sometimes that is limited by state law.
- EDA bond should generally be done as a conduit issue. Locality generally does not provide credit enhancement.
- Pledge of borrower revenues
- Mortgage of borrower property
- For public issues – be clear about disclosure obligations and 10b5 certifications!

# Use of Proceeds

- 95% must be used for exempt purpose
- Costs of issuance capped at 2%

# Private Use

- 5% Test
- Unrelated Trade or Business
- Leases
- Management contracts – Rev. Proc 97-13
- Research agreements



# Arbitrage and Rebate

- Post Issuance Compliance Procedures
- Rebate exceptions more limited than for governmental

# Modifications and Reissuance

- “Substantial modification”
- Triggers testing of most tax-exemption requirements – like a current refunding

# Questions?



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**Thank you for your time.**



# Exploring 501c3 Bond Finance for Nonprofit Organizations



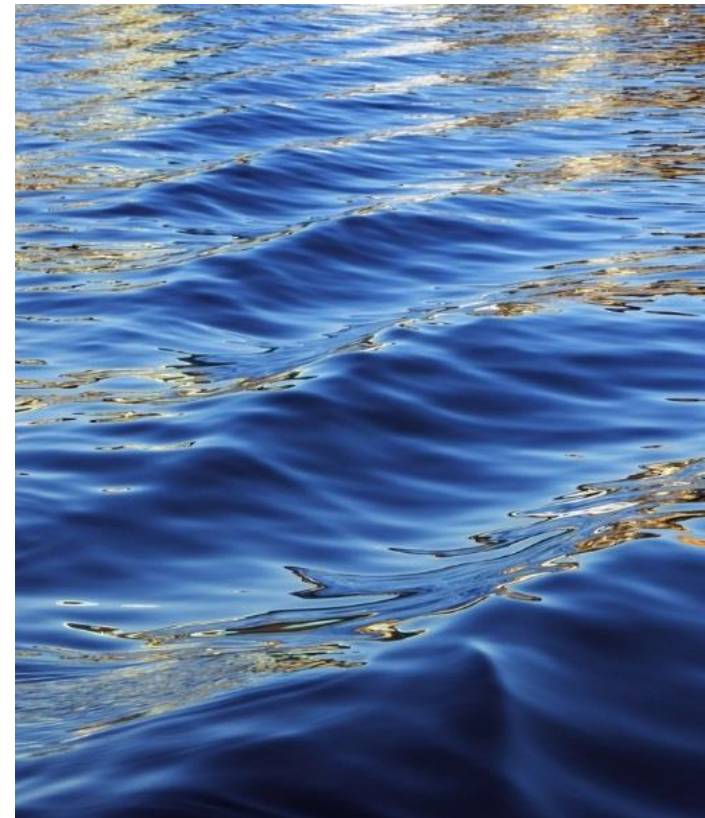
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IBank  
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# Exploring 501 (c)(3) Bonds Finance for Nonprofit Organizations

Financing with IBank



# Exploring 501 (c)(3) Bonds Finance for Nonprofit Organizations – Financing with IBank

- IBank Overview
  - California's General Purpose Conduit Issuer
    - Issuing 501 (c)(3) Bonds, Industrial Development Bonds (IDBs), Exempt Facility Bonds, and Public Agency Revenue Bonds (PARBs)
    - Statutory Limitation: Housing component must be limited to 20% of the total project cost.
  - Issuing Tax-exempt and /or Taxable Bonds via Public Offering or Private Placement
    - IBank-issued taxable bonds will be exempt from State of California personal income tax.
  - New Money for Acquisition and/or Construction, Refunding, and/or combination, Working Capital (limited), Costs of Issuance, Capitalized Interest, and Debt Service Reserve Fund
  - Maximum maturity 50 years, but generally issued at 30 or less.

# Financing with IBank

- Project Qualifications
  - Public Benefits:
    - Jobs retention/creation
    - Economic and environmental impacts
  - Acceptable Minimum Long-term Ratings
    - “Baa3” from Moody’s, and/or
    - “BBB-” from S&P or Fitch
    - If no credit rating sought, must be issued as a Limited Offering or Private Placement
  - Sophisticated Investor
    - Qualified Institutional Buyer (QIB) (S.E.C. Rule 144A)
    - Accredited Institutional Investor (AI) (Federal Regulations, Section 230.501(a)(1), (2), (3), (7), (8), (9), or (12))

# Financing with IBank (Continued)

- Get Ready: Pre-Issuance Considerations
  - Planning, Permits, Site Selection, Land and/or Facility Acquisition or Lease, Equipment, Tax Credits, Grants, and more
  - For assistance with site selection, tax credit, available grants, contact:  
Governor's Office of Business and Economic Development (GO-Biz) [www.business.ca.gov](http://www.business.ca.gov)
- Select Your Finance Team
  - Consultant/Municipal advisor
  - Underwriter/Lender
  - Bond counsel, disclosure counsel, bank counsel
- Prepare Financing Timetable, Develop Roles and Responsibilities
  - Decide when you will need the funds, monitor market conditions, fine tune as needed
  - Select IBank Board meeting date (monthly), Close within 180 days of approval



# Financing with IBank (Continued)

- IBank Application
  - Check due dates
  - Pay application fee (Online payment option)
  - Submit draft bond documents along with IBank application
- Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
  - TEFRA Notice (Posting on IBank website)
  - TEFRA Hearing (Will be conducted by IBank)
- IBank Board Review and Approval
- TEFRA Public Approval Certificate (PAC) (Will be signed by the State Treasurer)
- Release of Preliminary Official Statement
- Bonds Pricing

# Financing with IBank (Continued)

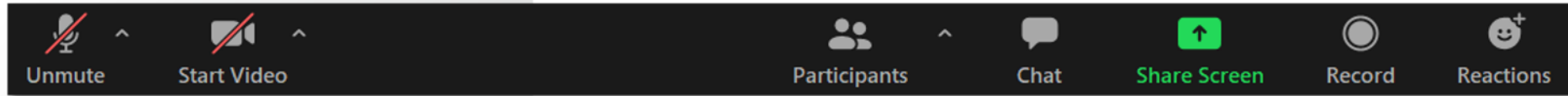
- Release of Official Statement
- Finalizing Bond Documents
  - Closing memorandum
  - Pre-closing
- Closing
  - Underwriter/Lender transfers bond proceeds to the borrower's account with trustee
  - Call to the Depository Trust Company (DTC), as securities depository for the bonds for closing.
  - Paying costs of issuance (from bonds proceeds or by the borrower)
- Post Bond Issuance Activities
  - Continuing disclosure reports and annual and/or semi-annual reports
  - Tax arbitrage rebate reports
  - Amendments, as needed (LIBOR phase out, etc.)

# Financing with IBank (Continued)

- **References**

- IBank Website [www.ibank.ca.gov](http://www.ibank.ca.gov)
  - Fariba Khoie, Bond Finance Manager (916) 341-6644
    - [bondunit@ibank.ca.gov](mailto:bondunit@ibank.ca.gov)
- Bond Applications and Documents <https://www.ibank.ca.gov/bonds/bond-applications-documents/>
- GO-Biz Website <https://business.ca.gov/>

# Audience Questions



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## Upcoming Events at CDFA

### **2023 CDFA Federal Policy Conference**

April 11-12, 2023 // Washington DC

### **CDFA // BNY Mellon Development Finance Webcast Series: Utilizing TIF with Brownfield Redevelopment Projects**

April 18, 2023 // 2:00 - 3:00 PM Eastern

### **CDFA Food Systems Finance Webinar Series: Access to Capital Tools & Food Systems**

April 25, 2023 // 2:00 - 3:30 PM Eastern

### **Intro & Advanced Revolving Loan Fund Course**

May 1-2 & May 3-4, 2023 // 12:00 PM - 5:00 PM Eastern

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