

JUNE 16, 2016



# Debt Management Peer Exchange

Summary Report

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## Background and Scope of the Peer Exchange

The Build America Transportation Investment Center (BATIC) Institute: An AASHTO Center for Excellence supports public sector capacity building in the area of infrastructure finance. One of the services provided by the BATIC Institute is the development and delivery of customized peer exchanges that enable the participants to engage directly with individuals from other organizations who have similar responsibilities and challenges. Subject matter experts help develop the peer exchange programs and facilitate discussions among the participants.

The 2016 Debt Management Peer Exchange was proposed by the Debt Management and Compliance Administrator for the Arizona Department of Transportation (ADOT). The primary purpose of the peer exchange was to provide an opportunity for finance professionals from state departments of transportation (DOTs) to share best practices regarding compliance with various IRS regulations related to tax-exempt financings. The topics selected for discussion focused on compliance issues that arise after debt is issued, such as restrictions on the use of tax-exempt financed property, records retention, and annual disclosure requirements. The peer exchange agenda is provided as Appendix A.

Fourteen participants from ten states registered for the one-day peer exchange. See Appendix B for a list of the Debt Management Peer Exchange participants and facilitators. The event was held in Falmouth, Massachusetts, on June 16, 2016, to facilitate participation by members of the topic panel for a National Cooperative Highway Research Program (NCHRP) synthesis study on Evolving Debt Finance Practices for Surface Transportation that met nearby on June 17, 2016.

### PEER EXCHANGE TOPICS AND DISCUSSION NOTES

The participants in the Debt Management Peer Exchange had varying levels of experience and involvement with debt issuance and tax compliance issues, so the morning session of the peer exchange was devoted to introductory material on the current practices of states that issue debt to finance surface transportation infrastructure.

## Debt Management for Surface Transportation: National State of the Practice

**Tamar Henkin** from High Street Consulting Group provided highlights from NCHRP research which shows that, on average, the percentage of available state transportation funds used to pay debt service each year has increased from approximately 8% in 2005 to 12% in 2014. The amount and type of debt issued by each state varies widely however, and the approach to debt management in each state is highly dependent on statutory debt limitations and the institutional arrangements governing the issuance of debt.

Ms. Henkin described some debt management “best practices” from prior NCHRP research, including:

- Use of a long-term financial plan to inform cash flow and debt timing
- Application of adequate debt service coverage ratios, in some instances exceeding statutory requirements
- Use of a debt service model to project anticipated payments and track existing commitments
- Strategic use of outside financial advisors to support financial decision making, negotiations, and monitoring

Areas for improvement identified in the prior debt management research includes:

- More robust financial planning and debt management policies
- Staffing and technical training
- Technology, analytical tools for cash management, debt timing and forecasting
- Analytical tools to optimize federal funds, state pay-go, GARVEE, other debt
- Debt affordability measures and tools
- Improved communication/education of legislative staffs

The current NCHRP research on debt finance practices is focused on the impact of evolving project delivery and finance models, such as availability payment transactions.

## Peer Exchange Kick-Off

**Jim Taylor** from Mercator Advisors led a discussion of the debt management strategies and compliance challenges associated with different types of transportation debt. For purposes of the peer exchange, the following examples were considered:

- State transportation bonds issued in the municipal market
- GARVEE bond transactions
- Project financings secured by toll revenue
- Private Activity Bonds and TIFIA

In most cases, risks associated with non-compliance can be easily managed by restricting and tracking the use of bond proceeds. Responsibility for continuing disclosure varies depending on the type of debt issued and requires active monitoring to ensure compliance.

## Considerations Prior to Debt Issuance

**Michael Lexton** from RBC Capital Markets provided an example of a State DOT providing credit enhancement for a regional toll agency project financing to illustrate the types of compliance issues that must be considered prior to issuing debt. In the example, both the State DOT and the regional toll agency had obligations to investors for continuing disclosure.

## Post-Issuance Compliance – Part 1. Overview, Private Business Use

The initial overview of federal tax regulations for tax-exempt bonds was provided by **Bob Eidnier** of Squire Patton Boggs. His presentation addressed restrictions on private business use of tax-exempt financed property, the allocation of bond proceeds on projects with multiple sources of funding, and the IRS audit process. Participants asked technical questions about the IRS rules and discussed their experiences with IRS examinations.

## Post-Issuance Compliance – Part 2. Records Retention, Tracking, Disclosures

After Bob Eidnier provided a brief overview of issues related to the spending and investment of tax-exempt bond proceeds, **Lisa Danka** from Arizona DOT showed the participants the debt management and compliance database that she has developed to organize and track post-issuance compliance activities. The Arizona DOT software program generates a bond compliance calendar, a record retention schedule, post-issuance compliance reports for every bond issue and data for performance measurement documentation. The peer exchange participants were very interested in the Arizona approach to compliance management and asked several questions.

**Sandy MacLennan** from Squire Patton Boggs led a discussion of the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative launched by the Division of Enforcement of the U.S. Securities and Exchange Commission (SEC) in 2014. Peer exchange participants shared their experiences working with underwriters to voluntarily self-report potentially misleading statements regarding their prior compliance with their continuing disclosure obligations.

## Final Roundtable

Due to time constraints, the discussion of key takeaways and potential follow-up items was limited. Feedback provided by the participants in the peer exchange evaluation however indicates that the interaction with State DOT peers was highly valued and there is significant interest in similar intermediate-level workshops and peer exchanges on related financial management issues.

The subsequent discussion among the peer exchange participants included observations about the decision-making process for new debt instruments and the treatment of contingent liabilities in financial reports.

## RELEVANT WEB LINKS AND INFORMATION SOURCES

An information packet was compiled for the peer exchange participants that covered basic concepts and terminology as well as more advanced topics related to post-issuance compliance. The information packet included the web links and information sources listed below:

### National Cooperative Highway Research Program (NCHRP) Research

- NCHRP Synthesis Study (37-11): Debt Finance Practices for Surface Transportation, 2009  
[http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_syn\\_395.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_395.pdf)

### Post-Issuance Compliance Guidance

- IRS -After the Bonds are Issued  
[https://www.irs.gov/pub/irs-tege/bonds\\_act\\_0607.pdf](https://www.irs.gov/pub/irs-tege/bonds_act_0607.pdf)
- IRS TEB-Post-Issuance Compliance  
<https://www.irs.gov/tax-exempt-bonds/teb-post-issuance-compliance-some-basic-concepts>
- Government Finance Officers Association (GFOA) Guidance for Issuers  
<http://gfoa.org/developing-and-implementing-procedures-post-issuance-tax-compliance-issuers-governmental-bonds>
- National Association of Bond Lawyers (NABL) Considerations for Developing Post-Issuance Tax Compliance Procedures  
<https://www.nabl.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1068>
- Basic Arbitrage Concepts - Web Forum Presented by IRS Office of Tax-Exempt Bonds  
<http://www.tax.gov/BasicArbitrageConcepts/>

### Examples of Post-Issuance Compliance Policies

- Virginia Commonwealth Transportation Board Post-Issuance Compliance Policy  
<http://www.ctb.virginia.gov/resources/policies/CTBPolicyIndex.pdf> (pages 77-81)
- Northern Virginia Transportation Authority Post-Issuance Tax Compliance Policies and Procedures  
<http://www.thenovaauthority.org/wp-content/uploads/Policy-15-Post-Issuance-Tax-Compliance-Policy.pdf>

### Other Resources

- The Public Finance Tax Blog  
<http://www.publicfinancetaxblog.com/>
- Post-Issuance Tax Compliance and Continuing Disclosure Responsibilities for Issuers and Borrowers of Tax-Exempt Bonds  
<https://www.orrick.com/Generic-Articles/~media/634C0B4C14CF45A2A2E39D69E0E0BDB9.ashx>

# Appendix A

## PEER EXCHANGE AGENDA

BATIC Institute Debt Management Peer Exchange

Thursday, June 16, 2016, 8:00 am – 2:00 pm, Falmouth, MA

### 8:30 – 8:40 A.M. WELCOME AND INTRODUCTIONS

*Jennifer Brickett, BATIC Institute*

8:40 - 9:00

#### National State of Practice Framework

*Tamar Henkin, High Street Consulting Group*

Overview of National Cooperative Highway Research Program (NCHRP) studies of debt management practices for surface transportation.

9:00 - 9:45

#### Peer Exchange Kick-Off

*Jim Taylor, Mercator Advisors*

- Structure and key objectives of the Peer Exchange
- Snapshot of participant debt programs
- Overview of organizational approaches to debt management

#### Facilitated Discussion

*All Participants*

Topics include:

- Structure of financial or debt management office
- Software and technology used
- Use of consultants and advisors
- Internal debt teams - disciplines represented (accounting, right of way, etc.), responsibilities, etc.
- Monitoring and tracking debt-related deadlines and activities
- Performance measurements

### 9:45 – 10:00 A.M. BREAK

10:00 - 10:45

#### Debt Issuance

#### Expert Overview of National Practices

*Michael Lexton, RBC Capital Markets LLC*

#### Facilitated Discussion

*All Participants*

Topics include:

- Entity issuing the debt and DOT role in issuance and post-issuance compliance (if DOT is not the issuing entity)
- Policies and procedures regarding:
  - *Debt issuance*
  - *Deciding which credit to issue (e.g., highway revenue vs GARVEE bonds)*
  - *Use of bond anticipation notes and interim financing*
  - *Application of proceeds to projects*
- Private activity bond experience (transportation-related)
  - *Amount issued, purpose and type of security*
  - *DOT role in post-issuance compliance*
- Relationship with the market
  - *Goals for investor/market relations*
  - *Investor relations website*

10:45 - 11:45

## Post-Issuance Compliance – Part 1. Overview, Private Business Use

### Expert Overview of National Practices

*Bob Eidnier, Sandy MacLennan and Pedro Miranda, Squire Patton Boggs*

### Facilitated Discussion

*All Participants*

Topics include:

- Post-issuance compliance procedures and responsibilities
- Overview of relevant regulations
- Final bond allocations (including any models used)
- Private Business Use (PBU)
  - *Source(s) and estimated amounts generated by each revenue source*
  - *Measuring and documenting PBU (including any models used)*
- Compliance issues for P3s, availability payment transactions, toll authorities
- Reimbursement period for right-of-way purchased for future projects
- Do you anticipate greater monetization of DOT assets (specifically ROW) to offset decreased gas tax revenue in the future?

11:45AM – 12:30 P.M. LUNCH

12:30 – 1:15

## Post-Issuance Compliance – Part 2. Records Retention, Tracking, Disclosures

### Expert Overview of National Practices

*Bob Eidnier, Sandy MacLennan and Pedro Miranda, Squire Patton Boggs*



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## Facilitated Discussion

*All Participants*

Topics include:

- Records retention policy and procedures
- Tracking investments and expenditures:
  - *Temporary periods*
  - *Spending exceptions*
  - *Arbitrage*
  - *Right of way financed with bond proceeds*
- Policies and procedures related to continuing disclosure:
  - *Annual filings*
  - *Staff responsibilities*
- SEC Municipalities Continuing Disclosure Cooperation Initiative – findings and resolution

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**1:15 – 2:00**

## Roundtable

*All Participants*

Key takeaways and potential follow-up items

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# Appendix B

## PEER EXCHANGE PARTICIPANTS AND FACILITATORS

### State Department of Transportation Participants

- **Lisa Danka** *Debt Management and Compliance Administrator, Arizona DOT*
- **Brett Johnson** *Director, Office of Major Project Development, Colorado DOT*
- **Jason Adank** *Deputy Comptroller, Florida DOT*
- **Beth Pellegrini** *Director of Revenue and Debt Management, Massachusetts DOT*
- **David Pottier** *Assistant Secretary and CFO, Massachusetts DOT*
- **Laura Mester** *Chief Administrative Officer, Michigan DOT*
- **Myron Frierson** *Director, Finance & Administration Bureau Director, Michigan DOT*
- **Janet Lee** *Special Projects Officer, Office of Administrative Services, Mississippi DOT*
- **Byron Flood** *Budget Division Director, Mississippi DOT*
- **Humberto Tasaico** *State Program Analysis Engineer, North Carolina DOT*
- **Richard Winning** *Deputy Director, Division of Finance, Ohio DOT*
- **Benjamin Asher** *Director, Project Finance and Debt Management Division, Texas DOT*
- **Jennifer Wright** *Project Finance and Debt Program Manager, Texas DOT*
- **Tricia Etzler** *Budget & Capital Officer, Office of Policy, Finance and Improvement, Wisconsin DOT*

### Peer Exchange Facilitators

- **Jennifer Brickett** *Director, BATIC Institute: An AASHTO Center for Excellence*
- **Mark Sullivan** *Director, Center for Innovative Finance Support, Office of Innovative Program Delivery, Federal Highway Administration*
- **Julian Gonsalves** *Associate Consultant, US Advisory Services, WSP | Parsons Brinckerhoff*
- **Jim Taylor** *Principal, Mercator Advisors LLC*
- **Tamar Henkin** *Partner, High Street Consulting Group*
- **Michael Lexton** *Managing Director, RBC Capital Markets*
- **Robert Eidnier** *Partner, Squire Patton Boggs*
- **Alexandra MacLennan** *Partner, Squire Patton Boggs*
- **Pedro Miranda** *Partner, Squire Patton Boggs*