

NATIONAL ASSOCIATION OF BOND LAWYERS

NABL U PRESENTS - THE ESSENTIALS

April 19-21, 2023 ♦ Baltimore, MD

Closing Logistics

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What exactly is a “Closing?”

A “Bond Closing” or “Closing” means the date upon which the bonds are initially issued and delivered in exchange for the proceeds representing the total purchase price of the bonds (or the initial advance in the case of a draw-down bond) paid by the underwriter or original purchaser thereof.

A Closing involves the formal transfer of funds from the underwriter/lender/investor to the issuer/borrower in exchange for the bonds, notes or other obligations evidencing repayment. The Closing is the legal consummation of the financing transaction and the beginning of the issuer/borrower’s legal obligations to repay the lender/investor.

I. Why Have a Closing?

No more comments on bond documents, the bonds have been sold, and the offering document has been posted. We’re all done, right?

Not yet. Despite the existence of general agreements among the parties as to what the terms of the bonds and the transactional documents will be going forward, each party needs certain closing representations, legal opinions and other assurances as to the application of bond proceeds, the satisfaction of closing conditions (which include the execution of all documents and certificates), the legal authorization and the financial viability of the transaction, and more, before funds can be transmitted and bonds can be released to the holders of the bonds.

II. Sources of Closing Requirements

The sources of requirements listed below may not be exhaustive and potential requirements listed below are provided for example only. Additional requirements may and likely will be applicable, and some of the listed requirements may not be applicable to certain financings or in certain jurisdictions. See Section III for additional deliverables.

A. State Law/Policy

1. Issuer Authorizing Statute

- a) Approvals of issuer (such as a governing body of issuer and/or Mayor/chief executive official of the issuer) and others (such as a state or local board, a state comptroller, or a conduit borrower's board of directors or trustees)
 - b) Project approvals
- 2. Other Statutes
 - a) Notice to officials or localities and the public
 - b) Consents or approvals of others (such as municipality, county and/or state that created the issuer)
 - c) Any public hearing requirements
 - d) Any publication or filing requirements (pre- or post-approval)
 - e) Other bonding or debt requirements
 - f) Estoppel periods
- 3. Local laws (e.g., charters or codes), ordinances, resolutions and/or other enactments or orders setting forth details of the issue and sale method/sale results
- 4. Issuer policies

B. Authorizing Indenture/Ordinance/Resolution or Other Documents

- 1. Additional Bonds Tests
 - a) Debt service coverage test(s) for new money issue(s)
 - b) Debt service savings test(s) for refunding issue(s)
- 2. Deliveries to the Trustee
 - a) Certified ordinances/resolutions (particularly for redemptions/refundings)
 - b) Legal opinions
 - c) Defeasance opinion and/or verification report for bonds being refunded post-closing (if needed)
 - d) Escrow Agreement and SLGS subscriptions or open market securities for refundings
 - e) Loan agreements, lease agreements and/or guaranty agreements being pledged to bondholders
- 3. Notice requirements

C. Federal Tax and Securities Laws

- 1. IRS Form 8038(-G), TEFRA, tax certificate, Issue Price Certificate, etc.
- 2. Offering documents, continuing disclosure agreement, Rule 15c2-12 Certificate, etc.

D. Bond Documents and Bond Purchase Agreement (not for bonds sold competitively)

1. Original or certified copies of authorizing documents (Bond Ordinance/ Bond Resolution/Trust Indenture (including supplements thereto)
2. Closing certificates of the issuer, conduit borrower (if any) and trustee
3. Approving opinion of bond counsel (including tax treatment of bonds)
4. Supplemental opinion of bond counsel and 10b-5 letters
5. Opinion of underwriter's counsel
6. Opinion of counsel to issuer and/or conduit borrower (in conduit deals only)
7. Preliminary and (if necessary) final "Blue Sky" memorandum
8. Continuing disclosure undertaking from each obligated person
9. Real estate documents (notes, mortgages and loan agreements) and insurance certificates
10. Uniform Commercial Code financing statements
11. Releases or terminations (from prior lenders in refunding transactions and/or bond insurers)
12. Agreed upon procedures letters
13. Continuing covenant agreement (for private placement or direct purchase transactions)
14. Escrow agreements or Letters of Instruction to Trustee (for refunding transactions)
15. Consents relating to offering document
16. Arbitrage and tax certificate and Form 8038(-G) for tax-exempt transactions

E. Credit Provider Agreements

1. Bond insurers may require a separate insurance agreement
2. Reimbursement agreements (for the letter of credit provider in a public offering) or continuing covenant agreements (for a private placement)
 - a) Closing certificates of the issuer and conduit borrower (if any)
 - b) Enforceability opinions
 - c) Audited financials
3. Consider 10b-5 needs when credit or liquidity provider is added

- F. Real Estate.** Where real estate collateral is involved, there are often several third-party service providers involved (e.g., the title company, surveyors, architects, contractors, appraisers, environmental engineers, etc.). With more parties there may come more documents. Bond counsel and underwriter's counsel/lender's counsel will often coordinate the real estate requirements.
- G. Custom.** For some issuers, borrowers or even industries, custom and past practice may add some requirements to a transaction. This is particularly relevant where the same issuer or borrower borrows regularly with the same working group. Such transactions may have their own requirements based on how things have been done in the past, even if there is not a specific or current source of the closing requirement. Such requirements can be revisited if no specific source of the requirement can be identified, but often parties like to avoid change unless it's necessary.
- H. DTC Operational Arrangements**
1. Governs the responsibilities of DTC and its Participants
 2. Provide for the methodology of payment of principal and interest on bonds

III. Specific Closing Deliverables

The deliverables listed below may not be exhaustive and potential requirements listed below are provided for example only. Additional deliverables may be required, and some of the listed deliverables may not be applicable to certain financings or in certain jurisdictions. The deliverables described in Section II may also be required (some deliverables listed in Section II are also listed below).

A. Closing Certificate(s)

1. Issuer (and host or other consenting jurisdictions)
 - a) Incumbency of legislative body members and officials, and identification of officials' signatures
 - b) Validity of authorization proceedings (e.g., open door/sunshine, public notice, election, referendum or other consents or approvals, etc.)
 - c) Authorization of transaction and transaction documents
 - d) Compliance with tests (mostly financially based) for the issuance of bonds, including any applicable debt limitation
 - e) Statements in the preliminary official statement and official statement
 - f) No litigation
 - g) Directions and requests to trustee

- h) Representations, warranties and closing conditions in bond purchase agreement and reimbursement agreement, as applicable
 - i) Issuer and borrower (for conduit transactions) tax certificates
2. Conduit borrower
- a) Legal organization of conduit borrower
 - b) Tax-exemption of conduit borrower (if applicable)
 - c) No litigation
 - d) Authorization of transaction and transaction documents
 - e) Statements in the preliminary official statement and official statement
 - f) Representations, warranties and closing conditions in bond purchase agreement, reimbursement agreement and continuing covenants agreement, as applicable
 - g) Conduit borrower's tax certificate
3. Trustee
- a) Receipt
 - b) Compliance with requirements of ordinance/indenture
 - c) Acceptance of duties (including serving as FAST Agent (*see* Section B.3 below))
 - d) Authorization and signature identification of officials
 - e) Legal authorization to service as Trustee in such jurisdiction
4. 10b-5 certificates of suppliers of material information to the preliminary official statement and the official statement

B. Legal Opinions¹

- 1. Bond counsel approving opinion/supplemental opinion(s)/10b-5 letter/reliance letter (as appropriate)
- 2. Opinion(s) of borrower's counsel regarding organization, authorization, validity, enforceability, including as to 501(c)(3) status (as appropriate)
- 3. Opinion of underwriter's counsel (if any)
- 4. Opinion of credit provider's counsel, swap counterparty counsel (if any)
- 5. Opinion(s) addressing defeasance of refunded bonds, if applicable and required

¹ Consider necessary addressees of opinions (e.g., bond counsel as addressee to borrower's counsel opinion).

6. Opinion of trustee's counsel, if required
7. Local counsel/issuer counsel/in-house counsel opinion(s) (if any)
8. Opinion of disclosure counsel/10b-5 letter of disclosure counsel (if any and as required)

C. Credit Support

1. Letter of credit/standby bond purchase agreement/insurance policy
2. Tax certificate as to fees, debt service savings from the provision of credit support, and similar matters
3. State aid and State/Federal subsidies, if applicable

D. Consents

1. Consultant reports
2. Audited financial statements
3. Bond Insurer

E. Rating Letters

1. Standard & Poor's, Moody's, Fitch or Kroll Rating Agencies

F. Refundings

1. Verification report
2. Escrow agreement or Letter of Instruction to the Trustee – regarding deposit amounts/escrow investments, establishment of escrow funds, and notice requirements
3. Tax certification relating to escrow investments
4. Defeasance opinion, if required

G. Tax Matters

1. Proof of publication of TEFRA notice, proof TEFRA was held at legal location, along with public hearing minutes and applicable elected official approval, as applicable (for qualified private activity bonds)
2. Volume cap (for certain qualified private activity bonds)
3. Issue Price Certificate
4. Certificates of municipal advisor (financial advisor) and underwriters
5. IRS Form 8038/8038-G
6. Post-issuance tax compliance policies
7. Qualified Hedge Certificate of Counterparty and Swap Advisor (if required)
8. Tax Compliance Certificate/Arbitrage Certificate/Use Agreement setting

forth covenants and representations of issuer and conduit borrower, as applicable

9. Certificate of Bank Qualification, if applicable

H. Other Deliverables

1. Copy of Enabling Act
2. Bonds
 - Signed by issuer, by either “wet” original or facsimile signature (Issuer By-Laws typically provide for facsimile signatures, but some By-Laws only provide for original signatures; state law may also govern the ability to use facsimile signatures)
 - Authenticated by Trustee
 - Usually sealed by issuer (clerk or secretary) (some issuers have done away with corporate seals on bonds)
3. Security and collateral documents (as applicable), including settlement statements, title reports and policies; plats; surveys; lien and litigation searches; UCC filings (including financing statements, termination statements, amendments, assignments); mortgages; PILOT agreements; redevelopment agreements; documents to be filed in land records, including any notice of special taxes
4. Certificates/proof of insurance
5. Investor letters (if applicable)
6. “Bring-downs” of any reports included in the offering documents
7. Continuing disclosure policies and/or post-issuance tax compliance procedures
8. Requisitions (Cost of Issuance, Project Fund, etc.)
9. Offering documents
10. Closing memorandum
11. Purchaser receipt acknowledging receipt of bonds and wire of funds

IV. “Delivery” of Bonds to “Bondholders”

A. Registration Requirement

1. Section 149(a) of the Internal Revenue Code (“Code”) generally requires bonds to be registered in order for the interest to be tax-exempt.
2. Section 149(a)(3)(A) provides an exception for book-entry ownership.

B. DTC's Book-Entry System

1. Publicly offered bonds are closed through The Depository Trust Company ("DTC"). The transaction must meet the requirements of DTC's *Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services)*, July 2021, available on DTC's website at:

<https://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>

2. The issuer must deliver a Blanket Letter of Representations ("BLOR") to DTC prior to closing (or have a BLOR on file with DTC). Confirm with issuer contact or DTC if they have a BLOR on file well in advance of closing and file a new BLOR if issuer contact has changed.
3. DTC FAST Closings
 - a) "FAST" is the Fast Automated Securities Transfer Program.
 - b) Eliminates the necessity of physically transferring securities to DTC. A contract between DTC and a third-party properly registered with DTC as a "FAST Agent" allows the FAST Agent to act as custodian for DTC, and in that capacity to take delivery of the securities registered to Cede & Co. Typically, the FAST Agent is the bond trustee which will hold the original bonds and store them in a vault post-closing on behalf of DTC.
 - c) FAST Rejection and Confirmation ("FRAC") is a function within the FAST program by which the FAST Agent can confirm the balance of securities held by a Participant or any transferees of securities. Further, on the closing date the FAST Agent will use FRAC to provide confirmation to DTC that the securities have been received and recorded on its books in the name of Cede & Co., and that the Fast Agent is in agreement (balance confirmation) with the underwriter on the principal amount of the securities. This is known as "updating the FRAC," which is typically accomplished by a phone call to DTC with the issuer, bond counsel, the underwriter, underwriter's counsel, the bond trustee and trustee's counsel. If there is a call with DTC, listen to make sure DTC indicates either that "the bonds are released" or "the FRAC has been updated." If DTC indicates that the FRAC still needs to be updated, you are not closed yet.

C. CUSIPs

1. “CUSIP” stands for the Committee on Uniform Securities Identification Procedures.
2. All publicly offered bonds are assigned a CUSIP in connection with pricing (i.e., before closing). The underwriter or municipal advisor/financial advisor will usually be responsible for obtaining the CUSIPs. A CUSIP number is used to identify a particular maturity of a bond issue. In the U.S., a nine-character CUSIP number is assigned:
 - a) First six characters – identifies the issuer. The first six characters may be referenced as the “Base-6 CUSIP.” Note that an issuer may have multiple Base-6 CUSIPs, one for each credit (e.g. general obligations, water/sewer obligations, solid waste obligations, and so on).
 - b) Next two characters – identifies the type of instrument (e.g., debt or equity) and uniquely identifies the issue within the issuer.
 - c) Final character – presence of this character indicates that a mathematical formula has checked the accuracy of the previous eight characters.

D. Private Placements/Direct Purchases

1. Publicly offered bonds are closed with DTC and assigned a CUSIP. For private placements, a DTC closing and a CUSIP may not be required (see D.2 below), and for direct purchases, DTC and CUSIPs are usually avoided for securities law reasons. Bonds need not be in DTC’s book-entry form to maintain tax-exempt status (not to be confused with the registration requirement in Section 149(a) of the Code). This means that for some closings, closing does not have to occur by DTC’s closing times (typically funding must occur by 1:00 p.m. eastern time, or later with permission from DTC for time extension and payment of fee).
2. MSRB Rule G-34 was amended in 2017 to require CUSIPs in private placements, with certain exceptions, most notably when the underwriter or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender. In 2019, the MSRB began a retrospective review of the 2017 amendments to Rule G-34, but no formal action has been taken as of March 2023.
3. The bond/note purchaser(s) will often execute an investor letter stating their status as a qualified institutional buyer and/or an accredited investor and their intent to hold the bonds for their own account.
4. For private placements, typically the bank/purchaser requires the delivery of the original bonds (authenticated by the trustee when applicable) to its

office on or prior to closing, sometimes with an original of the bond counsel opinion.

5. No continuing disclosure requirements under SEC Rule 15c2-12 will apply to private placements/direct purchases, although most banks/purchasers require ongoing reporting requirements of the budget/financials of the issuer (and/or conduit borrower). Note, however, that issuers or conduit borrowers with prior continuing disclosure undertakings may be required to disclose the incurrence of the private placement/direct purchase obligations (if it is a material “financial obligation”) in accordance with such prior undertakings.
6. Typically, no offering document for private placements (preliminary or final official statement or limited offering memorandum).
7. Typically no rating or bond insurance required.

V. Timing Requirements

A. Delivery of the Final Offering Document

1. After bond pricing (for publicly offered bonds), SEC Rule 15c2-12(b)(3) requires that the final offering document be available to the underwriter(s) within seven business days after any final agreement to purchase, offer, or sell the bonds (i.e., the bond purchase agreement) and in sufficient time to accompany any confirmation that requests payment from any investor.
2. MSRB Rule G-32(b)(1) requires that underwriters provide the final offering document to the Municipal Securities Rulemaking Board’s EMMA website within one business day after receipt from the issuer. MSRB Rule G-32(a)(i) requires that underwriters provide the final offering document to investors no later than the closing.

B. DTC

1. The offering document must be delivered to DTC’s Underwriting Department, Eligibility Section, in electronic form, at least 10 business days prior to the closing. This is typically done by the underwriter or the financial advisor/municipal advisor.
2. The identity of the lead underwriter, CUSIP numbers, maturity dates principal amounts and interest rates for bonds must be delivered to DTC’s Underwriting Department, Eligibility Section, in electronic form, at least 7 business days prior to the closing. This is typically done by the underwriter or the financial advisor/municipal advisor.
3. In most cases, prior to closing with DTC, physical delivery of the debt instrument (i.e., the bonds) should be made to DTC or the FAST Agent (e.g., the trustee/paying agent) or the direct placement holder. The trustee will usually need to authenticate the bonds, so advance delivery to the trustee may be requested.

4. Be mindful of DTC's typical release deadline and possible extension deadlines.

C. Other Considerations

1. Variable rate bonds that are initially issued in a weekly rate are closed on the day of the week that is the beginning of the weekly rate period.

VI. Logistical Considerations

A. Numbers of Originals

1. Documents should be signed in sufficient quantities to provide original executed copies to all parties that require them. Parties should be polled in advance of closing to determine if they require original signature pages.
2. Include sufficient numbers of originals to account for any original documents that must be filed with third party entities (i.e., recorder's office).

B. Obtaining Signatures and Other Items

1. Verify that all signatories are authorized by appropriate instrument (resolution, ordinance, certificate of authority) to sign the documents.
2. Determine the availability of the officials who will be executing documents as early as possible.
 - a) If a party is arranging for execution of documents itself, determine who the responsible person will be for obtaining signatures.
 - b) Ensure that executing officials directly receive notice that their signatures will be required and when the closing is.
 - c) Ensure that the party is informed if its documents have to be sealed (the issuer or issuer's counsel/bond counsel should be aware if this is a requirement) and/or notarized.
 - d) Many documents need to be signed after pricing and before closing, but some require signature several weeks before closing, such as SEC Rule 15c2-12 or "Deemed Final" Certificates, bond purchase agreements (for negotiated underwritings and some private placements/direct purchases), orders of award (public sale at competitive bid), etc. **Plan ahead and coordinate execution of any such documents or certificates that need to be signed earlier than others.**
3. Method of Execution: If electronic or DocuSign² signatures are to be used, consider authorizing such execution in applicable resolution, ordinance, supplemental indenture, bond purchase agreement, etc. In many cases, electronic signatures are only acceptable if agreed to among the signers (consider adding an electronic signatures provision). Be sure to review state

² DocuSign is used generically and intended to include any electronic signature software.

statutes adopting Uniform Electronic Transfer Act and related statutes or rules. Note that DocuSign signatures may not always be ideal (e.g., for bond purchase agreements, DocuSign limits advance signing, and timestamp issues could arise). Questions to ask include: Are electronic, facsimile or similar signatures permitted under applicable law? If so, must a live signature first be recorded with any state or local official or office? Do the documents need to contain language regarding electronic, facsimile or similar signatures? Adoption of emergency ordinances/resolutions that may allow for virtual meetings and variance of typical issuer meeting requirements and related laws (e.g., freedom of information act) may require certifications as to actual presence versus virtual presence.

4. Signature packages

- a) Because bond documents often change after signature packages are prepared and sent out/returned, it is recommended that drafting parties prepare stand-alone signature pages (i.e., signature pages separated from the document) for each document and closing certificate. You may also want to consider removing all document identification and version numbers on signature pages. May also consider dating first page of document and not the signature page in case the closing date changes.
- b) For organizational purposes, especially where stand-alone signature pages are used, it is helpful to identify the document to which a signature page belongs in the footer of the signature page, and to make signature pages unnumbered pages or to number them S-1, S-2, et seq. Similarly, if the closing list is finalized, it can be helpful to list the closing list number of closing certificates on the first page header of the closing documents.
- c) Ideally, each party should be presented with a full copy of each document it is executing, along with the requisite number of copies of the signature page, broken out separately. (This is not always possible if you have to provide signature pages well in advance of pre-closing due to the signatories' schedules.)
- d) Some parties may require tabs or stickers to indicate where they should be signing. If dates on the signature pages are purposely left blank, some persons may need to be instructed to leave those dates blank (e.g., the date and time on bond purchase agreement signature pages are often left blank).
- e) It is recommended that all signature pages be scanned and returned to bond counsel (or other requesting party) immediately after signing so electronic signature pages can be reviewed promptly and then used to assemble closing transcripts. Reviewing the scanned signature pages before the signer puts originals (if any) in the mail can significantly reduce the risk of having to go back to signers

multiple times for re-signing — sometimes a major inconvenience or problem.

- f) Note: In some deals with large issuers (e.g., The City of New York), there may be signatories that are from multiple city and state departments and/or agencies (e.g., Mayor, City OMB, City Comptroller, Deputy Comptroller, City Clerk, City Law Dept., Department of Environmental Protection, State Comptroller). In those cases, it is imperative to coordinate, as soon as possible, with appropriate parties on the issuer side to ensure that all documents will be signed by all signatories. Some conduit borrowers may also require multiple signatures from various parties.

C. Deliveries of Other Items and Release of Signatures

1. Coordinate “early and often” regarding any third-party deliverables, such as title commitments, environmental reports, appraisals, surveys, verification reports, etc.
2. Ensure that parties that are providing closing items but are not attending an in-person closing are informed of what is required of them, when it must be delivered, to whom and in what form. For closing items required beyond signature pages, it may be helpful to send a separate email listing what is needed (e.g., cashflow certificates, organizational documents, certificates of appointment). Sending this request with the signing instructions may cause confusion or distract the signer/sender from pertinent details.
3. When fully executed signature pages are returned (electronically or in hard copy) prior to closing, it is important to clarify with the signing party or their counsel when the signature pages are authorized to be released. Signed documents are typically held “in escrow” until the closing call on the morning of closing.

VII. The Pre-Closing and Life’s Little Problems

Pre-closing is a critical step in every bond financing transaction. Bond counsel and other lawyers involved (and their paralegals and other staff) use a pre-closing to make sure everything is in order the day prior to closing so that the morning of closing is reserved for wires, wire confirmations and, if applicable, a call with DTC to release the bonds. For complicated closings or last-minute issues, closing day can be a little more eventful; however, the goal of every lawyer is to have the deal ready to close the day before the official closing.

Pre-closings are usually “managed” by bond counsel, but they are coordinated with the full working group. Parties other than bond counsel usually look to bond counsel for closing instructions.

A. Timing

1. In-person pre-closings used to be common, particularly for conduit transactions and large governmental deals. Pre-closings are rarely held in

person for run-of-the-mill governmental financings. For in-person pre-closings, all parties arrive at one physical location to deliver required documents, sign documents, review signatures and closing checklists, etc. Many pre-closings are now held electronically by phone or video conference. Some only require an email or two.

2. Most pre-closings take place the business day immediately before closing, but it could be held two business days prior. The lawyers, paralegals and other staff should be preparing for pre-closing days and weeks before (e.g., sending signature pages out, etc.).
3. If the pre-closing will take place in a building with heightened security for visitors, determine the identities of all persons to be attending in advance and inform security.
4. If officials are expected to sign documents at the pre-closing, determine their time of attendance in advance and make sure other parties expecting them to sign documents have provided signature pages prior to the officials' arrivals.
5. As stated previously, most pre-closings now take place on an electronic basis, with scans of fully executed documents circulated to parties via email/uploaded to a virtual closing room. In such cases, client documents should only be circulated/uploaded with the understanding that they are to be held in escrow pending confirmation (typically by bond counsel) on the closing date that the transaction has closed.
6. If any documents must be recorded prior to or promptly after release of the bonds, coordinate early on with the title company/abstractor as to when it needs to take possession of the recording package. The answer could impact the deadline by which documents must be finalized/fully executed at or prior to pre-closing.

B. The Pre-Closing "Room"

1. It goes without saying, but when closing a transaction in-person, the area where original documents will be stored and executed should be kept separate from the areas where food and drinks will be available and where participants can get work done. When multiple parties are attending an in-person closing, it is always helpful to have adjoining conference rooms available for sidebars on related matters. If possible, it is helpful to have both a photocopier and a printer in the closing room. It never hurts to have a notary around either.
2. For electronic pre-closings, each law firm has its preferred processes and procedures. The pre-closing logistics may also be different based on clients, type of deal, size of deal, etc. For example, conduit financing transactions are usually closed with a formal pre-closing. The larger the deal, in terms of the number of documents, the number of parties, the dollar amount, the more "formal" the pre-closing process may be. In some cases, where bond counsel is the only law firm involved, only the trustee and bond counsel

may be involved in the pre-closing (with a single email often informing the larger working group that the bond transaction has officially closed). Electronic pre-closings may look something like this:

- a) Documents and certificates finalized after pricing (including preparation of the final offering document).
- b) Signature pages circulated for signature. You may need to provide or coordinate notary and messenger/courier services.
- c) Scanned PDF copies of signature pages returned.
- d) Electronic copies of all documents, certificates, etc. assembled in PDF format.
- e) Original signature pages returned and originals of each document/certificate assembled (as needed).
- f) Bonds, recordable documents (if any), and any other wet ink originals required to be delivered (as needed).
- g) Electronic copies of all documents circulated to working group for review and sign-off. This can be done by one email, a series of emails or documents can be uploaded to a virtual closing room (e.g., Firmex, Box, Dropbox, NetDocuments, Sharefile, etc.). Note that it may take several rounds of uploading and review to complete this step. Invitations to the virtual closing room should be arranged well in advance of closing to make sure any technical issues can be resolved before closing. All parties should have working access to the virtual closing room unless other arrangements have been made for final review of documents. Many times, the virtual closing room for the transaction will be the same virtual room used for due diligence, so parties will be familiar with the platform / website prior to closing.
- h) All parties respond by email or on a pre-closing call that they have everything they need to release signatures and close the transaction. Parties authorize the trustee, the underwriter, DTC and maybe bond counsel to close the next morning.
- i) Closing call with DTC or Trustee (usually for FAST closings) or bond purchaser.

C. Other Helpful Hints

1. Use the closing index for the transaction as an actual checklist for documents that are needed to close. Prepare the closing index early in the transaction, and as bond purchase agreement, notice of sale and other applicable document drafts are circulated (including any bond insurer requirements), confirm whether items need to be added to the closing index. For more complex transactions, include the party or parties responsible for drafting/producing/obtaining deliverables on the closing index. You could

also include required signatories on the closing index in order to keep track of who should be signing which documents.

2. As more transactions move toward electronic copies only, wet ink signatures on legal opinions are becoming less and less common; however, counsel attending an in-person closing out of town should consider bringing blank firm stationery with them, in case there are last minute changes to their opinion.
3. Make sure that for in-person pre-closings, if certain documents require a seal, the signatory actually brings the seal. Certain conduit issuers that are in the market infrequently may have misplaced their seal. Seals can be ordered very inexpensively and this will not be an issue provided you ask early on in the transaction.
4. Never, never, NEVER let a signer of documents leave an in-person pre-closing until you have confirmed they have executed everything they are required to execute. For electronic pre-closings, this hint is the basis for requesting scanned PDF copies of all signed signature pages PRIOR to the signer compiling the return package of original signatures. It is COMMON to find missing signature blocks, so it is important to keep the signer(s) available until counsel is comfortable that everything is in order.
5. Focus working group participants' attention on the signature pages early in the process, to ensure signature blocks are formatted correctly, names are spelled correctly, and titles are accurate before signature packages need to be compiled or signatories show up for pre-closing. Names and titles of signers are often available early in the process (based on authorizing resolutions). For some complex transactions, the signature blocks themselves can be a complicated piece of drafting and counsel should be involved (rather than paralegals or other staff).
6. It is recommended that delivery and return of signature packages be effected through an overnight delivery service or a courier service that tracks pick-up and delivery rather than by first class mail. If relying on an overnight delivery service to deliver/return signature packages and/or bonds, be mindful that FedEx and other overnight delivery services do not necessarily guarantee next-day delivery during weather events and often near the holidays in December. The COVID-19 pandemic also played havoc with deadlines at certain times during calendar years 2020 and 2021, including services imposing earlier deadlines for drop-off (at locations) or pick-up (from boxes) (which earlier times were not always correctly reflected on websites or drop-off boxes). The COVID-19 pandemic also led to many offices being closed or understaffed, making signature packages and other deliverables hard to deliver. All addresses should be confirmed with the intended recipient to be sure the office is accepting packages. Many times the intended recipient may need to receive mail at their personal address despite the documents typically going to a business

address. Many of these changes initiated by the COVID-19 pandemic have survived the pandemic.

7. If sending signatories hard copy packages by overnight delivery, include a pre-addressed return package and, where available, register sender and recipient to receive e-mail confirmation of tender, exceptions and delivery. If the recipient is having the package delivered to an address other than the recipient's office, or the recipient does not plan to be in the office on the day of delivery, use the recipient's cell or home phone number, as applicable, rather than office phone number when completing the delivery label (you may already have a recipient's delivery information saved in the website address book of the delivery service and you may need to override that saved information).
8. Consider taking signature packages or bonds to be delivered to the trustee/registrar to the physical location of the overnight delivery service you are using rather than relying on drop boxes. Missed pick-ups from drop boxes can and do occur.
9. Signatories who are infrequently involved in bond financings may need to be reminded (i) not to use first-class mail to return completed signature pages, (ii) not to retain any completed signature pages (unless you explicitly direct otherwise), and (iii) not to fold signatures pages. You can also forestall issues by making sure that a signatory representative who you have not worked with previously understands that company-specific drop boxes must be used for, or pick-up arrangements made with, overnight delivery services.
10. If trustee/paying agent is part of an affiliated group and officers commonly use a single email address, for bonds registered with DTC, ensure underwriter indicates the correct entity when completing DTC info. For example, Manufacturers and Traders Trust Company officers tend to use their @wilmingtontrust.com e-mail addresses, which may cause an underwriter (particularly when a successful bidder at a competitive sale) to incorrectly assume the trustee/paying agent entity is Wilmington Trust, N.A.
11. When drafting bond forms/closing certificates, derive the CUSIP numbers from the CUSIP Service Bureau-generated listing obtained by the financial advisor or the underwriter, not from a list of CUSIP numbers separately prepared by a working group member or the inside front cover of the final offering document.
12. Make sure that relevant parties obtain the proper funding instructions for good faith deposits or funding at closing (e.g., federal funds wire instructions vs. ACH instructions, or vice versa; USDA currently funds closing disbursements by ACH). These instructions are typically included in the closing memorandum.

13. Send closing memorandum/funding instructions and any other documents/certificates that contain wire or ACH instructions or account information by secure email.
14. Remind working group (and include a reminder in the closing memorandum/funding instructions) that if someone receives an email with a change in funding instructions, the recipient of the changed instructions should confirm the change with an appropriate party by phone and *not* by reply email, even if the sending party's email appears to be correct. There have been instances of working group member emails being hacked during a transaction.
15. If bond proceeds are being wired to the issuer at closing rather than to a trustee bank, make sure an issuer official will be available to confirm, and understands the importance of timely confirming, receipt of the wire with the receiving bank.

NOW, you're done!