Washington Public Ports Association
Small Ports Seminar

Capital Projects & Financing Options
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What you will learn in today’s presentation:

- Today’s presentation will answer the following questions (and more!)

  - What is a bond?
  - Who is involved in a bond issuance?
  - What types of bonds are there?
  - What other loans and grants might be available?
  - What legal considerations might I need to account for?
  - What is a credit rating and what does that process look like?
  - I have existing bonds, should I refinance?
  - After I've issued bonds, are there any ongoing compliance or disclosure requirements?

Types of Debt

- There are many sources of funding which may be a part of your overall debt profile:
  - Grants
  - State Loans
  - Federal Loans
  - Vendor financing
  - State LOCAL Program
  - Lines of Credit

Rule 1: Look for "cheap" money first

- Today, we'll address issuing bonds by:
  - Public issuance through investment banking firm
    - In the presentation, we'll refer to this as "Bonds" or "Bond Issue"
  - Direct placement through a bank
    - In the presentation, we'll refer to this as a "Bank Loan" or "Direct/Private Placement"

Bond Issue or Bank Loan?

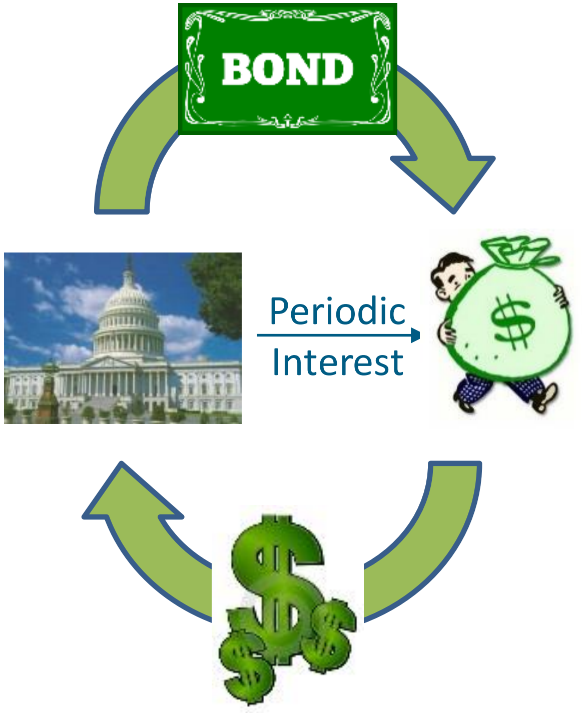
- Bond Issue (Publicly Issued)
  - Have lower interest rates but higher up-front costs
  - Work better for larger amounts of money and longer periods of time
  - Allow for interest-only payments and various repayment structures
- Bank Loan
  - Works well for interim, variable rate financing
  - A lot of banks will provide fixed rate financing for short terms; fewer banks will fix the interest rate for a long term (10+ years)
  - Banks often work better for less robust credits
- If the decision is close to a toss-up, consider the "hassle factor"
  - Work with your financing team to help determine the best source of funding

What is a Municipal Bond?

- Issued by municipal governments
  - Government (Issuer) issues a bond to an investor, promising to pay periodic interest (coupon) and repay the face value of the bond at maturity
- Bond characteristics

Bond Issue	Bank Loan
Sold to Multiple Buyers	Sold to Single Purchaser
Increments of $5,000	Any Increment
Each maturity can have a different interest rate	Generally has a single interest rate
Callable: Typically 10 Years	Callable: Varies

- Frequently secured either by
  - Pledge of taxes (general obligation)
  - Pledge of revenues (revenue)



Debt Issuance Flow

Financing Team

- Hire / Call Bond Counsel, Municipal Advisor and/or Underwriting Firm

Develop Plan of Finance

- Determine borrowing amount and how it fits with existing and future debt
- Where to obtain the funding

Prepare Documents

- Bond Resolution
- Official Statement
- Rating Presentation

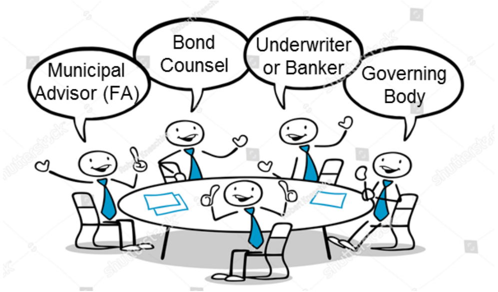
Sale

- Interest rates are set
- Bond Purchase Agreement signed (underwritten)

Closing

- Funds Available

Members of a Financing Team



- You, the “Issuer”
- Bond Counsel
  - Disclosure Counsel
- Municipal Advisor (Financial Advisor)
- Banker Representing Underwriting Firm or Bank
  - Underwriter counsel or bank counsel
- Bond Registrar
- Treasurer
- Rating Agency and Bond Insurer as applicable
- Escrow Agent
- Your financing team is there to serve you
  - *Be sure you understand and are comfortable with the process*
  - *Ask a lot of questions!*

Members of a Financing Team: Selection

- How do you select the members of the financing team?
  - Bond Counsel, Municipal Advisor and/or Banker
    - Get recommendations from your peers
    - Meet at the various conferences
    - Issue a Request for Proposals
  - Banker
    - Work with your Municipal Advisor once you have a general idea of the financing (term, size, security)
    - This will dictate whether an investment banking firm or direct placement bank makes sense
    - Depending on method of sale, you may not hire a banking firm up front
  - Other Members (escrow, verification, feasibility, etc.)
    - Working with your financing team will help determine what other members may be needed for a financing

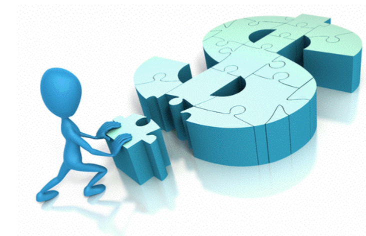
Members of a Financing Team: Bond Counsel

- Your legal counsel
- Specializes in the issuance of bonds
- Prepares election resolutions
- Prepares bond resolutions
- Prepares reimbursement resolutions
- Ensures proper authorization and enforceability
- Reviews Federal tax law impacts and regulations
- Provide unqualified legal opinion that the bonds
  - Have been duly authorized and are valid and enforceable obligations
  - Exempt (or not) from Federal income tax
- Opinion is required by investors and others

Members of a Financing Team: Disclosure Counsel

- For a public offering with an Official Statement
  - Whether the OS is being prepared for a negotiated sale to an Underwriter, or a competitive sale
- Bond Counsel may act as DC, or can hire another firm
- DC can take lead on drafting the OS
- DC reviews the information being disclosed to potential investors
  - Reviews information for accuracy and materiality.
  - Looks for any material omissions.
- Provides "10b-5 opinion" that, after review, to DC's knowledge, the OS accurately represents the information contained and does not omit any material disclosure

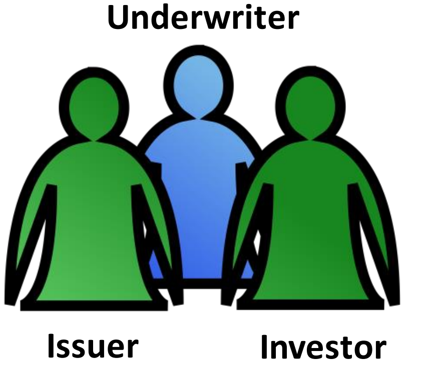
Members of a Financing Team : Municipal Advisor (Financial Advisor)



- Works with an issuer to develop and review a plan of finance and coordinate the overall financing
- Identify source of funds
  - Bank (direct placement) vs. underwriting firm (public sale)
  - Sale Method: Competitive vs. negotiated
    - Represents the issuer in negotiations with the underwriter
    - Facilitates a competitive sale
- Provide current market-based expertise
- Provide bond structuring and financial analysis
- Monitor outstanding debt for refinancing opportunities
- Coordination with rating agencies, bond insurers, underwriters
- Owes a fiduciary responsibility to the issuer

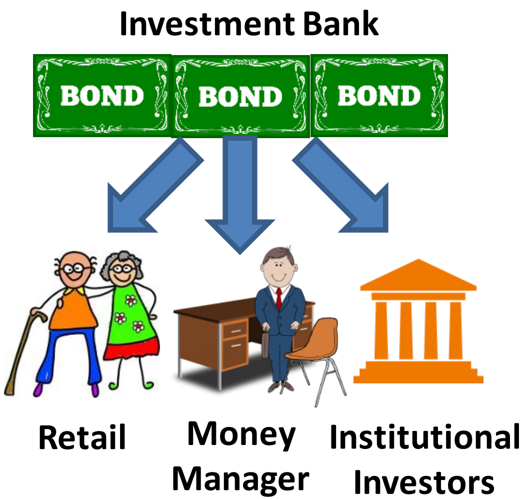
Members of a Financing Team: Investment Banking Firm or Bank

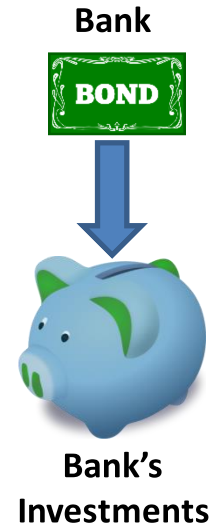
- Banker
  - The person you will work with on a day to day basis, bringing the firm’s expertise to the financing team
  - If you don’t have a financial advisor, a Banker may perform many of the same tasks
- Underwriter
  - The person in the middle, between the issuer and the investor
  - Sets the interest rates at which the investors agree to purchase the bonds and the issuer agrees to sell the bonds
    - Municipal advisors are integrally involved in the sale process



Members of a Financing Team: Investment Banking Firm or Bank

- Financial institution that sells your bonds to investors (investment bank) or purchases your bond to hold as an investment (bank)

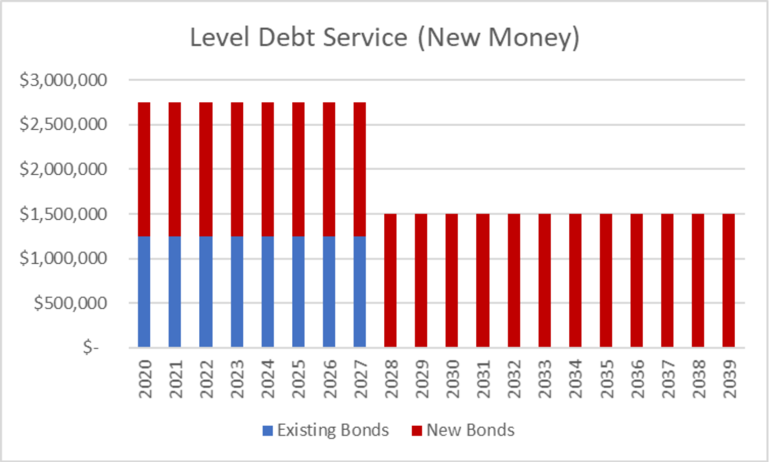


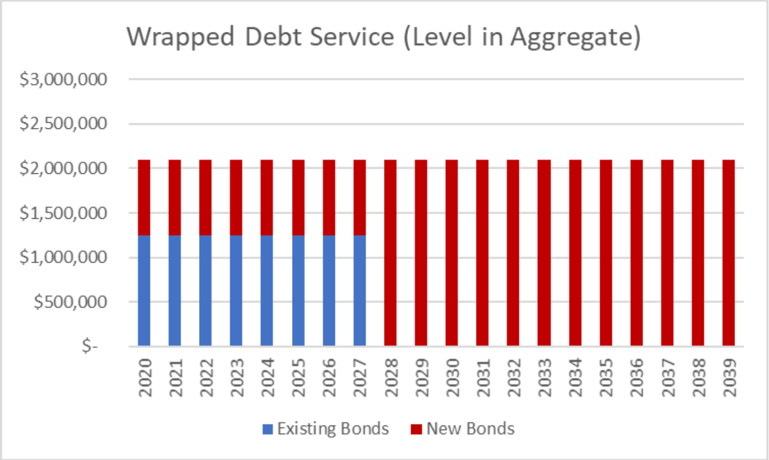


- The banking firm
  - Does not have a fiduciary responsibility to the issuer
  - However, must deal fairly with the issuer and investors, and offer a fair price

Debt Structure

- “Level” and “wrapped” are examples of common debt structures
- Explore various structures to determine what makes sense for your organization
- When applicable, can frequently structure most expensive debt to be repaid first followed, by least expensive debt





Types of Bonds

- General Obligation Bonds – Voted & Non-voted
  - “Full Faith, Credit and [sometimes] Taxing Power”
  - Dollar limit determined by State statute
  - Payable from taxes and other available funds (grants, revenues, etc)
  - Lowest cost of borrowing
- Revenue Bonds (e.g. General, IDD, Airport, Special Facility, etc.)
  - Payable solely from revenues (all revenues, or specific pledged streams)
  - No dollar limit, but a practical limit (i.e. revenue)
  - Issuer makes certain covenants and pledges
    - Debt service coverage, reserve fund, additional bonds
  - Cannot be paid from property taxes
- Assessment-backed Bonds (e.g. Local Improvement District)
  - Finance improvements (e.g. roads, sewers) funded through assessments
  - Assessment or utility assessment district is based on a special benefit

Types of Bonds: General Obligation Debt Limits

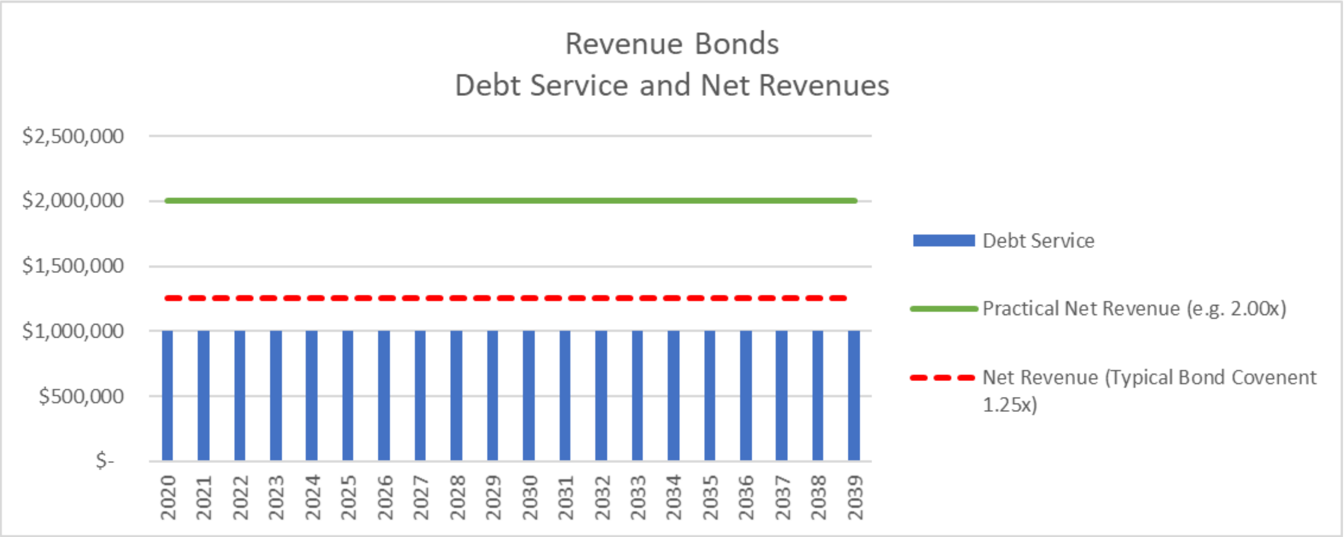
- State law limits general obligation debt
- The limitation is based on the issuer's assessed valuation
- Limitations (% of assessed valuation)

Government Type	Non-Voted	Total
Cities	1.50%	7.50% (General, Utilities, Parks)
Counties	1.50%	2.50%
Ports	**0.25%**	**0.75%**
Public Utility Districts	0.75%	1.25%
School Districts	0.375%	5.00%

- May want to maintain capacity for a "rainy day"

Types of Bonds: Revenue Bonds

- Revenue bond debt does not have a statutory limit, but has a practical limit
- Bond covenants generally require the Net Revenue available to pay debt service is 1.25x (times) greater than the debt service
  - To actually sell the bonds, Net Revenue should be greater than 1.25x



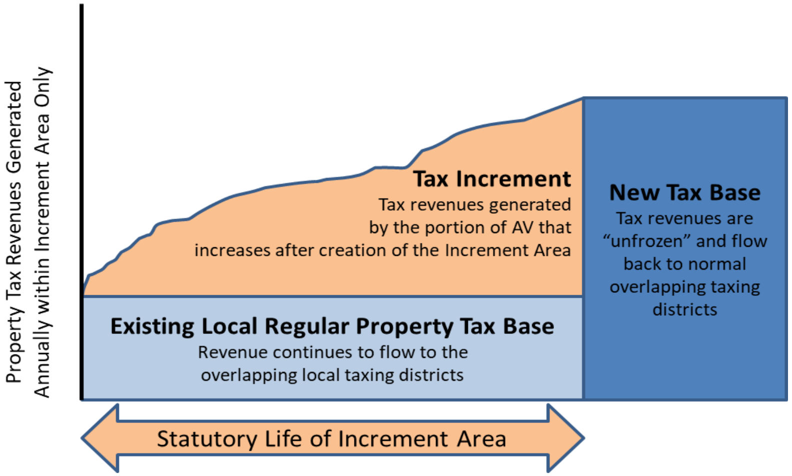
Tax Exemption

- Tax-Exempt
  - Bond interest is exempt from Federal income tax
  - Typical requirements
    - Governmental purpose; PAB with public hearing (new rules help here!)
    - Limits on private activity
    - Reasonable expectation for spending proceeds; arbitrage restrictions
  - Bank qualified (BQ): Less than $10 million of tax-exempt bonds issued in a year (legislation continues to be proposed to increase to $30m; outlook remains dim)
- Taxable
  - More expensive debt
  - No IRS restrictions
  - Tax credit / Direct subsidy bonds
    - Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, etc.

Rule 2: Do not listen to your Municipal Advisor or Banker for tax advice…
Talk to your Bond Counsel!

Tax Increment Financing (TIF)

- Allows a port (or a city or county that sets up the Tax Increment Area) to dedicate its incremental tax revenue and those of other taxing districts for up to 25 years
- Intended to fund/finance public improvements owned by a local government for a specific project/site within or serving the Increment Area
  - Must be a degree of certainty that the improvements will directly result in development
  - Outside professionals may be helpful for projections and financial models
- During the statutory life of the Increment Area
  - Existing local regular property tax revenues will continue to flow to the overlapping taxing districts
  - Incremental taxes will flow to the port (in this case) based on the portion of AV that increases after the creation of the area
- LTGO bonds are the primary method of leveraging the tax allocation revenues
  - Counts against the port's debt capacity



Government Loan Programs: RRIF

- Railroad Rehabilitation and Improvement Financing (RRIF) program offers direct loans and loan guarantees to finance (or refinance) railroad infrastructure.
  - Acquire, improve, or rehabilitate intermodal or rail, including track, components of track, bridges, yards, buildings and shops.
  - Develop or establish new intermodal or railroad facilities.
- RRIF Loans
  - Fund up to 100% of project.
  - Term up to 35 years; no pre-payment penalty.
  - Deferrable for 5 years after project completion.
  - Buy America requirement.
- E.g., Port of Everett, WA (2019), $6m loan
  - 3,300 feet of on-terminal track, relocated warehouse.

Government Loan Programs: TIFIA

- Transportation Infrastructure Finance and Innovation Act (TIFIA) (1998) loans are federal credit for transportation projects; including some port intermodal projects.
- TIFIA, like RRIF offers:
  - Low interest rate, no interest accrual until drawn.
  - Flexible amortization.
  - Up to 35 year repayment period.
  - IIJA allows up to 75 years for some projects!
  - Deferrable for five years after project completion.
  - No pre-payment penalty.
  - Buy America requirement.
  - Amount limited to 49% of project costs; typically only 33%.

Government Loan Programs: State Revolving Loans

- Revolving state loan funds provide low-cost funding for transportation facilities, such as port infrastructure.
  - CARB / AAG
  - CERB
  - PWB
- Direct loans are made to public entities with eligible transportation improvement projects.
  - Generally subordinate debt; enhancing senior lien DSCR.
  - May be viable bridge financing.
- Useful for a port’s secondary systems: utilities, clean water, broadband, etc.

Government Loan Programs: WA FRIB

- WSDOT Freight Rail Investment Bank
- Loans for smaller projects/completion of larger projects.
  - $250k limit
  - 20% local match
- Public benefits are required; must submit business plan (but benefit criteria are wide-ranging)
- 2025 timeline not announced (likely applications due September 2024; funded July 2025)
- $8.73 million available 2023-25 biennium

Grant Programs

- Port Infrastructure Development Program
  - Includes a statutory set-aside for small ports to improve and expand capacity to move freight reliably and efficiently and support local and regional economies.
- INFRA (Nationally Significant Multimodal Freight & Highway Projects)
  - Grants for multimodal freight and highway projects to improve safety, efficiency, and reliability.
- Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grants
  - Previously were known as TIGER and BUILD grants; to modernize ports, intermodal transportation, etc.
- Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grants

Documentation: Bond Resolution

- Governing body authorizes the issuance of the Bonds
- Describes use of proceeds – the projects or refundings
- Pledges for payment – taxes or revenue stream
- Establishes lien position – senior or subordinate
- Contains tax covenants – arbitrage, private use, etc.
- Contains or delegates
  - Bond terms – rate, years, amounts
  - Manner of sale – negotiated, competitive, bank placement
  - Delegation terms
- Additional covenants, usually for revenue bonds
  - E.g., rates and fees, property surplus/sale limits, Debt Service Coverage Ratio percentages, reporting

Documentation: Official Statements

- The disclosure document provided to investors prior to the sale
  - POS or Preliminary Official Statement
- Contains information about the project being financed; structure; call provisions; security for the bonds; and details about the issuer, local economy, etc.
- Updated with the pricing details after the sale (Final Official Statement)

Documentation: Quotable Quote

"Let me ask you this. Does anybody read this [Official Statement]? I mean, only experts read this . . . [M]ost people don't read this, nobody reads this. They go by what the raters, that is Moody's, Standard & Poor's, saying that these bonds are safe to buy."

Testimony of City Manager of Miami, Florida,
in SEC administrative proceeding against the City

Rule 3: Read the Official Statement and Bond Resolution. These are your documents.

Bond Ratings

- Ratings are essential to most Bond Issues
- Three primary rating agencies
  - Moody's Investors Service
  - S&P Global Ratings
  - Fitch Ratings
- Insurance may be used to enhance the rating
- Banks may not require a rating
  - Rating agencies would like to be made aware of additional borrowing
- Meetings with analysts
  - Virtually via Teams/Zoom
  - In-person visit, at your site or the rating agency
  - Conference call

Investment Grade Rating Categories

Moody's	S&P	Fitch
Aaa	AAA	AAA
Aa1	AA+	AA+
Aa2	AA	AA
Aa3	AA-	AA-
A1	A+	A+
A2	A	A
A3	A-	A-
Baa1	BBB+	BBB+
Baa2	BBB	BBB
Baa3	BBB-	BBB-

Methods of Sale

Negotiated

- A banking firm is selected prior to the sale of Bonds
- Works as part of the financing team
- Sells the bonds to investors on behalf of the issuer
- What is negotiable?
  - Structure, terms, and maturities
  - Interest rates and yields
  - Redemption provisions
  - Underwriting compensation
- Negotiated sales work well for
  - Unusual or complicated structures
  - “Story” bonds
  - Lesser credit
  - Volatile markets

Competitive

- Financial advisor works with client to develop financing plan, structure the issue, prepare the official statement, apply for bond insurance (if available) and bond ratings, and schedule a sale date
- Underwriting firm is selected through bids received electronically
  - Firm providing lowest cost of financing is selected
    - Lowest cost of financing includes interest rates and underwriting fees
- Competitive sale works well for:
  - Straight forward credits with good ratings
  - General Obligation and Essential-service Revenue Bonds
  - Large-sized issues
  - Stable markets

Bond Issue Sale Date

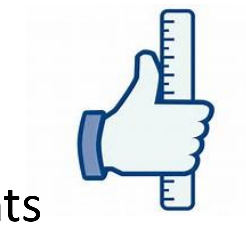
- Negotiated
  - A pricing call takes place the day before
    - Issuer and financing team discusses preliminary interest rates, comparable sales, and schedule for the sale day
  - About a three hour process
    - Underwriter begins order period early in the morning
    - Sales force confirms order amounts and interest rates
    - Issuer and financing team reconvene after order period for an update or, if the bonds have been sold, agree to size and interest rates
- Competitive
  - At the set date and time, underwriters submit interest rate / fee bids
  - Most bids arrive seconds prior to the specified time
- Approval of sale
  - By the "Designated Representative" if delegated, or by governing body

Bond Refundings

- Bonds are most frequently refinanced (“refunded”) for savings
- Bonds typically have a call date
  - Bond holders are protected until the call date
- “Current refunding”
  - New bonds are issued up to 90 days before the call date
- “Advance refunding” of governmental bonds
  - New bonds are issued more than 90 days prior to the call date
  - Bond proceeds are placed in an escrow account until the call
  - Escrow pays principal and interest on the old bonds
  - After 2017 Tax Law change, new bonds are taxable
  - (Legislation to reinstate TE advance refundings is still stalled.)

Bond Refundings

- Bonds are typically refunded for the following reasons:
  - Lower interest rates
  - Restructure debt
  - Modify bond covenants
- Generally, all things being equal, refunding savings improve closer to the call date



Rule 4: Do not rush into a refunding without understanding your options.

Environmental, Social & Governance Bonds

- ESG Bonds are those that incorporate environmental, social and governance factors...
- ***Environmental*** might include building for climate-related events; cleaner/renewable energy; carbon emissions/pollution control; sustainable public transportation; nature conservation; and sustainable water and wastewater management
- ***Social*** might include education, healthcare, affordable housing and water for underserved populations
- ***Governance*** factors such as sound internal controls, financial practices and long-term planning
- Self-certified, or can pay for a 3rd party ESG verifier opinion.

Environmental, Social & Governance Bonds

- Investors looking for "impact investing", e.g., funds with ESG selection goals
- Credit rating agencies integrated ESG factors in their rating processes
- **Will it save you money?**
  Evidence of interest rate savings is scarce
- **But...** A broader base of investors allows your Municipal Advisor greater discretion in structuring your offering
- Increases the target investor groups that your underwriter can market to
- And... the optics of ESG Bonds are great for highlighting the Port's community stewardship

Your Post-Issuance Compliance Policy

POST-ISSUANCE COMPLIANCE POLICY (the "PICP") provides for:

- Post-issuance tax compliance
- Arbitrage rebate
- Private activity tracking
- Records retention
- Disclosure: primary market (POS/OS) and continuing disclosure (EMMA filings)
- Often done as a stand-alone policy, so that it can be updated with changes in disclosure laws.
- Model PICPs abound, and bond counsel is happy to provide a draft customized for your needs.

The SEC in Action

2021 – Sweetwater SD, CA
* Continuing disclosure filings reported surplus when really in deficit spending.
* Former CFO fined $28k
* Issuer required to establish PICP including training, and hire independent consultant to review practices.

Post-Issuance Compliance Policy Covers...

Reporting

- For publicly issued Bonds:
  - Rule 15c2-12 requires financial and event information
  - Annual financial reports and 10-days for event information to be posted.

The SEC in Action

2017 – City of Beaumont, CA
* Continuing disclosure filings omitted required information, was not disclosed in offering documents.
* Former City Manager fined $37.5k
* Issuer required to establish PICP including training, and hire independent consultant to review practices.

- For bank loans:
  - Define compliance with each loan's individual reporting requirements to the Bank (audited financials, budgets, etc.).
  - Other notice requirements or parties such as bond insurers, rating agencies.
- Reporting is posted to the EMMA web site.
- Identifies the person(s) responsible for posting and provides for training.

Continuing Disclosure Undertakings

CONTINUING DISCLOSURE UNDERTAKINGS ("CDUs")

- Underwriter is required to have you enter into a CDU for the benefit of your bondholders for each bond issue.
- Report Annually:
  - Audited Financials – beware the deadlines in your CDU (often 9 months after the close of the fiscal year). If your audit is not finalized, upload unaudited financials by the deadline, and then follow up with the audit when it is available.
  - Double beware timing for uploading your post-deadline audit quickly after receipt. Too long of a delay (within 2 weeks is a safe bet...) and that might be considered a disclosure failing.
  - Other information specified in the CDU (e.g., tax collection %, tax rates, tax amounts, etc.) – beware CDUs for different bonds requesting different information.

Continuing Disclosure Undertakings

The SEC in Action

2017 – Town of Oyster Bay, NY
* Did not disclosure guarantees of loans
* SEC found the omission was material, failed to disclosure risks, and was fraud
* Town settled with injunctions and independent consultant requirements

- Report within 10 business days
- A number of events (“15c2-12 events”) that might reflect on your credit worthiness. E.g.,
  - (1) Principal and interest payment delinquencies;
  - (2) Non-payment related defaults, if material;
  - (6) Adverse tax opinions
  - (11) Rating changes;
  - (12) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- Reach out to bond counsel if you think you might have a reportable event, and we can prepare a notice form for you to post if needed.

Continuing Disclosure Undertakings

New events added effective once you issue publicly offered bonds after February 2019:

  - (15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
  - (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties

- Requires reporting for previously unreported debts – bank loans, State or Federal loans, lease/leaseback, etc.
- Your PICP can define materiality to prevent accidentally violating the rule. E.g., material means over $5,000,000, or over 5% of budget or an enterprise's revenues.

Arbitrage Rebate

With market rates climbing, potential rebate issues are back!

- With regard to your bonds, arbitrage refers to using your tax-exempt bond proceeds (issued at lower tax-exempt rates) and investing those proceeds at higher taxable rates.
- Arbitrage earnings result from investing tax-exempt bond proceeds in taxable markets, resulting in a profit on the earnings.
- The IRS disfavors exploiting the difference between tax-exempt and taxable markets for investment profit, rather than investing in appropriate governmental capital improvements.
- Arbitrage earnings are therefore subject to forfeit to the IRS (rebate of excess earnings).

Summary Comments

- Ask a municipal advisor, banker or your bond counsel – early and often!
- Look for free money and low-interest loans first
- Bonds provide the lowest rates but have higher up-front costs and require more work to issue
- Bank loans are quicker with lower up-front costs and no public reporting requirements
- Rates are impacted by the market, your rating, payment pledge, tax status, bank qualification, coverage and covenants, current events, etc.
  - Your MA, Banker and Bond Counsel are resources for determining your options and impacts!
- Do not let rating agencies dictate how you run your organization
- Do not get talked into something unless you understand it
- If you are worried about repaying the bonds, don't borrow the money
- Do not forget your reporting afterwards!
- DO NOT DEFAULT ON BONDS