STEP 2: HIRING BOND PROFESSIONALS TO ASSIST WITH THE BOND SALE

THE FINANCING TEAM

Most financings require the services of experienced legal and financial professionals. This step deals with the various specialists who may be employed by local government issuers. Some are essential, such as Bond Counsel, whereas others may be retained at the discretion of the issuer, such as a Financial Advisor. It is advisable to periodically review contracts with long-standing paid advisors. Requests for Proposals (RFPs) should be sent to several specialist candidates when a new private sector service is needed. The proposals received can then be compared and evaluated and will form the basis for selection of the professionals.

The Debt Management Division can provide lists of private sector professionals with whom a municipality may contract for services. Large municipalities may have in-house staff with sufficient experience to plan and execute a significant portion of the work related to a bond sale.

The Municipal Debt Advisory Commission (MDAC) exists for the purpose of assisting local municipalities with bond sales and encourages local officials to make use of its services. It is recommended that all districts with borrowing authority acquire at least a procedural knowledge and understanding of debt issuance before attempting to sell bonds.

ISSUER/BORROWER

Issuers are the legal entity responsible for authorizing the documents related to the bond sale. This role is generally filled by a local, regional, or state government. The Issuer is generally the Borrower but in some instances, the two roles may be different. While the Issuer is the legal entity enabling the sale, the Borrower is the entity that, either directly or through additional documentation, is the party that receives the proceeds of the bond issue and is obligated to repay the bonds. Issuers are governed by elected or appointed government officials that authorize the issuance of the bonds. Some Issuers authorize the issuance of bonds for other entities not directly affiliated with the Issuer. This type of issuance is often called a conduit financing. In Oregon, conduit financings are most common for private college, non-profit, housing, and healthcare facilities.

ISSUER AND/OR BORROWER LEGAL COUNSEL

Issuers and Borrowers often have their own legal counsel. Bond investors need assurance that the Issuer and/or the Borrower have properly authorized the bonds. Each entity must comply with both state laws and local authorizations. Thus, it is important that the legal counsel has a close working relationship with the Issuer/Borrower and understands authorization rules. It is also often important that the Issuer/Borrower counsel review bond documents to ensure accuracy and that any Issuer/Borrower commitments in the bond documents do not run afoul of the Issuer/Borrower's other policies and rules.

Local attorneys often play an important role in bond sales. They are especially vital in ensuring that municipalities are in compliance with local election, meeting, filing, disclosure laws, and other regulations or actions related to the borrowing. Usually in concert with recognized Bond Counsel, they advise in a legal capacity prior to the actual issuance of a legal opinion on the bonds. While the local attorney may perform many of the same or similar legal functions of the Bond Counsel, they do not act as recognized Bond Counsel.

BOND COUNSEL

Bond Counsel is an important resource in the debt issuance process. Bond Counsel opines on the legality of the bond offering, thereby acting as legal advisor to the ultimate investor.

Prior to World War I, the purchaser of the bonds employed Bond Counsel. This practice was changed when local governments found an advantage in using Bond Counsel prior to the bonds being sold. Use of Bond Counsel was one of several reforms that occurred as a result of many defaults on railway bonds in the late nineteenth century. Today, Bond Counsel serves two primary functions:

- Counsel ensures the bonds are legally authorized and issued.

- Counsel issues a legal opinion as to the tax-exempt status of the bonds. The legal opinion must be unconditional and is essential for a bond issue to be marketable.

Because of market demands, only a law firm that is recognized as Bond Counsel through experience should act as Bond Counsel. A local attorney or law firm inexperienced in bond matters will rarely be acceptable to the market. Local attorneys may be, and often are, employed for other purposes to assist with debt issuance. Although Bond Counsel

are not specially certified or licensed, they must command the confidence and respect of the investment community.

Bonds that are to be marketed nationally should use a "nationally recognized" Bond Counsel. *The Bond Buyer's Municipal Marketplace (the "Red Book")* is a trade periodical which lists firms that are recognized nationally as Bond Counsel. "National" firms are those whose legal opinion is recognized in any geographic area. The Debt Management Division can also provide a list of names and addresses of Bond Counsel firms doing business in Oregon and the Pacific Northwest.

The services of Bond Counsel include:

- Determining whether legal and binding authority exists to issue the bonds.
- Drafting a bond ordinance, resolution, or a trust indenture (for revenue bonds).
- Drafting the notice of sale.
- Examining all or part of the Official Statement.
- Examining transcripts of proceedings to determine that the bonds were legally advertised and sold.
- Submitting a written legal opinion on the tax-exempt status of the offering.
- Determining that the bonds were legally executed.
- Answering questions of the issuer, investment banker, or public official.

FINANCIAL ADVISORS

Financial Advisors (FA) may provide a wide range of services to the municipal debt issuer. In general, the Financial Advisor will coordinate all elements of the bond sale from inception to closing. Optimally, a financial advisor is competent and thoroughly knowledgeable in areas of local government laws and practices, investor attitudes and preferences, rating considerations, and the bond and money markets. In Oregon, Financial Advisor services are not currently regulated. The MSRB, however, has a list of registered municipal advisors. Financial advisory services are provided by independent consulting firms and by banks. The role of the financial advisor is to provide advice to the issuer in regards to the best practices for the sale of the bonds and to negotiate the best terms on the bond sale with the Underwriter.

The Financial Advisor manages the sale process leading up to the sale of the bonds and advises the Issuer on business terms and the sale process.

Financial advisors may prepare an overall financing plan, advise on marketing the bonds, assist with a presentation to rating agencies, calculate the timing of a bond sale, determine the range of interest costs for different alternative means of financing, provide an estimate of the underwriters' fees, help decide on the bond structure and call provisions, set bid requirements, participate in a negotiated sale, evaluate the sale when it is finished, and participate in the preparation of the Official Statement to satisfy the informational needs of the prospective investors. The Financial Advisor may also assist the Issuer in preparing a request for proposal (RFP) for other services.

It is prudent to develop an RFP that describes the specific services the municipality desires from a Financial Advisor. This RFP should be sent to several consulting firms. The Debt Management Division maintains a list of financial advisors who have expressed an interest in working with Oregon bond issuers. Responses to RFPs from interested advisors enables a municipality to choose which firm's services will best meet their needs. (See Sample Request for Proposal (RFP) for Underwriting Services).

If a financial advisor is retained, it is recommended that a formal, written contract be signed which specifies the duration of the engagement, services to be provided, and the amount of compensation. It is advisable that the Financial Advisor not be allowed to bid on bonds in a competitive sale or act as underwriter in a negotiated sale. It is also recommended that Financial Advisors not be able to change roles (i.e. resign as Financial Advisor and become Underwriter) in the middle of a transaction. Advisors may bill on the basis of a flat rate; the amount of bonds sold, or time expended. If the advisor is paid from bond proceeds, care should be taken to ensure the legality of such payment, in terms of the bond resolution and to plan for payment (if any), should the bonds not be sold.

UNDERWRITER / PRIVATE PLACEMENT AGENT / PURCHASER

Underwriters are securities firms and commercial banks that purchase an issuer's debt securities with the intention to resell the securities to investors at a profit. They can provide the issuer services in planning and design of the borrowing, spreading the risk of the borrowing among several firms, and marketing the securities in the regional and national public debt markets.

The underwriter's functions and responsibilities vary significantly, depending on whether the securities are sold using the competitive bid or negotiated method of sale. In a competitive sale, the Issuer is responsible for the planning and design of the bond offering. The Issuer (generally with the assistance of a Financial Advisor) solicits bids

from competing underwriters for the purchase of the municipality's securities. The Underwriter in a competitive sale is also referred to as the Purchaser. In a negotiated sale, the underwriter is usually retained at the beginning of the issuance process that culminates with the underwriter purchasing the bonds on terms mutually agreeable to the issuer and underwriter.

Private placement agents are generally banks or securities firms and act for the issuer in the arrangement of a bond sale directly to a private placement purchaser. They differ from underwriters in that a private placement agent does not actually purchase the bonds from the issuer; rather they arrange the bond sale to a third party for a fee.

UNDERWRITER'S COUNSEL

In negotiated sales, private placements or direct purchase, the Underwriter (or Placement Agent or Purchaser) will often retain their own counsel. This firm (generally the same firms that act as Bond Counsel), will review various aspects of the bond transaction to give assurances to the Underwriter that the bonds are authorized, and that all is in order. Underwriter's Counsel is solely responsible to the Underwriter and therefore may negotiate terms on behalf of the underwriter. Underwriter's Counsel fees are often paid from the expense component of the Underwriter's Gross Spread.

DISCLOSURE COUNSEL

A separate Disclosure Counsel is sometimes hired to prepare the Official Statement. In Oregon, the Official Statement is most often prepared by the Bond Counsel, the Financial Advisor, or the Underwriters Counsel. Some issuers, who are frequently in the market with different teams of underwriters, prefer to retain a single firm to prepare the Official Statement to keep it consistent across many different transactions. As part of the closing documents, Disclosure Counsel will generally provide an opinion to the investors in regards to the completeness of the information included in the Official Statement.

PAYING AGENT/FISCAL AGENT/REGISTRAR/TRUSTEE

The paying agent, fiscal agent or registrar facilitates transactions with investors. The Paying Agent pays to the investors (who purchased the bonds) the periodic principal and interest payments throughout the life of the bonds. The registrar registers the issue upon its sale and re-registers the issue as it is traded on the secondary market. The registrar is responsible for maintaining records on behalf of the issuer. When the paying agent is a commercial bank or trust company, it is recommended that the issuer

establish a contract containing time limits regarding forwarding funds to the paying agent to provide for payment of interest and maturing bonds. The contract would also specify the use of funds not needed to pay debt service, fees to be charged and specific services to be performed. The paying agent must be equipped to pay interest on and redeem bonds as they are due, to cancel bonds and coupons and handle lost or stolen bond issues.

Certain municipalities may serve as their own paying agent, use the County Treasurer, or enter into agreements with financial institutions to serve as the municipality's paying agent and registrar. For convenience and to facilitate timely and accurate payment of interest and principal when due, the same financial institution normally serves as both paying agent and registrar.

Trustees are used for revenue bonds and in the case of an advance refunding of revenue or general obligation bonds. In the case of an advance refunding, the trustee accepts the proceeds from the new or refunding bond issue and repays the refunded issue. The trustee also advocates for the interests of the bondholders, taking appropriate administrative and legal actions on their behalf to enforce the requirements of the bond obligation entered into by the issuer.

Prior to the 1990s, the Paying Agent and Trustee kept record of the investors so that timely payments could be made (either by mail or wire) to the bond holders. With the advent of electronic record keeping and banking, the Depository Trust Company (DTC) became the record keeper for most bond sales and therefore greatly reduced the role in tracking of bond holders by Paying Agents and Trustees. These roles continue to exist, for the payment of bonds, largely as a backup should the DTC ever discontinue this service.

AUDITORS / VERIFICATION AGENTS

The Official Statement for a bond issue should contain the issuer's audited financial statements. Most Oregon districts are required by statute to have independent audits. The auditor may also review the Official Statement to ensure that the financial statements are correctly presented and that other directly-related information is consistent with the financial statements. Alternatively, statements may be copied verbatim from the audit.

When an Issuer sells Advance Refunding Bonds, the proceeds of the bond issue are placed in an escrow account and invested in non-callable securities (usually Treasury bonds). In this type of financing, an auditing firm (usually a CPA), plays an additional role - that of Verification Agent. Both MDAC and investors require an independent verification that the securities placed in the escrow account will be sufficient to pay off the refunded bonds.

RATING AGENCIES

Credit rating agencies such as Moody's Investors Service, Inc., Standard and Poor's Corporation, and Fitch Investors Service appraise, analyze, and monitor the credit quality of a bond issuer. These firms provide credit ratings for use by retail and institutional investors to gauge the credit risks inherent in the bond issue. The fee for the rating service is paid by the issuer and based on the issue size, type, and complexity. The importance of a rating is dependent on a variety of conditions. The Debt Management Division can assist municipalities with informational requirements for a bond rating and advice on the desirability of an issuer presentation to the rating agencies.

CREDIT ENHANCEMENT PROVIDERS

An issuer may chose to obtain a credit enhancement provider for its bonds if they have a lower rating from a credit rating agency. This enhancement can be in the form of a Letter of Credit issued by a bank, a Bond Insurance Policy issued by a specialty insurance company, or the Oregon School Bond Guaranty by the State Treasurer's Office.

Bond insurance essentially allows an insurance firm to "lend" their rating to a bond issuer for a fee. The insurance acts to raise the credit quality of the issuer for each insured issue, which results in lower interest costs to the issuer. Bond insurance costs vary, based on the size of each issue and the issuer's underlying credit worthiness. The costs are also based on the total amount of future debt service requirements. Issuers should compare the cost of the insurance with the potential savings resulting from lower interest rates due to the higher credit rating. The insurance is only worthwhile if the interest savings from bond insurance exceeds the cost of the enhancement, or if the issuer has been given a prohibitively low credit rating.

In 2008-09, the bond insurance climate changed dramatically. All of the previously operating bond insurers lost their AAA rating, some falling to below investment grade. These events have shaken the market's perception of bond insurance and the rating process which maintained the AAA ratings until they suddenly fell to lower levels without significant advance warning. A few new firms have been formed which have been assigned a new AAA rating, and some firms continue to operate, using lower ratings.

OFFICE OF THE STATE TREASURER

The Office of the State Treasurer (OST) has a wide range of financial responsibilities, including managing the investment of State funds, issuing all State bonds, serving as the central bank for State agencies, and administering the Oregon 529 College Savings Network.

The Debt Management Division (DMD) provides central coordination for all State-issued debt, including general obligation bonds, revenue bonds, and certificates of participation. The Division monitors local and national bond markets, as well as financial and economic trends that impact bond issuance structures and interest rates. Fees charged for DMD services are detailed in OAR 170-061-0015.

Oregon School Bond Guaranty Program

Oregon voters approved Ballot Measure 54 at the November 1998 General Election. This Oregon Constitutional amendment allows the State to guaranty qualified general obligation bonds of eligible school districts, education service districts, and community colleges throughout Oregon. As a result, the program allows qualified districts to have their bonds rated based on the State's current credit rating. The program saves districts thousands of dollars in interest costs over the life of the districts' bonds and can be used alone or in conjunction with bond insurance.

The Oregon School Bond Guaranty Program (OSBG), as defined in Oregon Revised Statues 328.321 to 328.356 is administered by the OST. OST, in this capacity, filed Oregon Administrative Rules 170-063 which guides administration of the program. OST began accepting requests for participation in January 1999.

The OSBG program requires the jurisdiction to submit an application, fee, current audited financial information, and an authorizing resolution to the OST. Once the information is analyzed, a “Certificate of Qualification” is sent to the applicant. Issuers then choose to participate in the OSBG program based on their own cost-benefit analysis. For those issuers who choose to use the OSBG program, a “Confirmation Letter” is sent to the issuer once the Bond Counsel opinion and the final official statement is received by OST.

Further information on the OSBG program is available on the OST web site:

http://www.oregon.gov/treasury/Divisions/DebtManagement/LocalGov/Pages/Oregon-School-Bond-Guaranty.aspx

Private Activity Bond Committee

Private Activity Bonds (PAB) are government tax-exempt debt instruments that provide a direct benefit to private businesses. They bear numerous restrictions imposed by federal and state regulations. Specifically, they are subject to the limitations and provisions of the Federal Tax Reform Act of 1986, section 141 of the Internal Revenue Code, ORS 286A.605 to 286A.645.

PABs use a municipality's tax exempt status as a conduit to obtain tax-exempt interest rates. The local government issuer incurs no legal responsibility to repay private activity conduit bonds; rather, the private business's credit quality provides the security for the debt financing and ultimately all repayment responsibilities.

State statue ORS 286A.615 empowers the Private Activity Bond Committee to carry out the following functions:

- Adopt by rule standards for amounts allocated to the Committee for further allocation for economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection, transportation and other activities that the Committee determines will benefit the citizens of the State of Oregon.
- Develop strategies for reserving and allocating the limit that are designed to maximize the availability of tax exempt financing among competing sectors of the Oregon economy.
- Survey the expected need for private activity bond allocations at least once each year.

The Legislative Assembly allocates the amount of federally authorized private activity bond volume cap among State agencies and the Private Activity Bond Committee for the two calendar years that begin in a biennium. Any volume cap not allocated by the Legislative Assembly is allocated by the Private Activity Bond Committee.

OAR 170-071-005 and 170-061-0015 governs the PAB Committee's fees, operations, and allocation rules. Any volume cap that is not used by December 15 of each year is returned to the Private Activity Bond Committee. This unused volume cap then becomes carry forward, to be allocated during the first Private Activity Bond Committee meeting of the next calendar year. The carry forward allocation is able to be used within three years, and expires December 30th of the third year. If this carry forward is not used, it is then permanently expired.

The PAB Committee shall, by statute and Administrative Rule:

- Support projects that increase the number of family wage jobs in this state.

- Promote economic recovery in small cities heavily dependent on a single industry.
- Emphasize development in underdeveloped rural areas of this state.
- Utilize educational resources available at institutions of higher education.
- Support development of the state's small businesses, especially businesses owned by women and members of minority groups.
- Encourage use of Oregon's human and natural resources in endeavors that harness Oregon's economic comparative advantages.

The PAB Committee meets quarterly and the staff of the Debt Management Division of the Office of the State Treasurer provides services to the PAB Committee. The Committee is responsible for processing requests by State and local issuers for PAB current and carry-forward allocations. The PAB staff maintains the State's private activity bond volume cap records and provides all administrative support to the Private Activity Bond Committee.

Municipal Debt Advisory Commission

The Oregon Municipal Debt Advisory Commission (MDAC) was established in 1975 to assist local governments in the cost-effective issuance, sale, and management of their debt. The Commission is composed of seven members, including the State Treasurer (or his designee), three local government finance officers, one representative for the special districts, and two other public members.

State statue ORS 287A.634 empowers the Municipal Debt Advisory Commission to carry out the following functions:

- Collect, maintain, and provide information on bonds sold and outstanding and serve as a clearinghouse for all local bond issues.
- Maintain contact with municipal bond underwriters, credit rating agencies, investors, and others to improve the market for public body bond issues.
- Undertake or commission studies on methods to reduce the costs of state and local issues.
- Recommend changes in state law and local practices to improve the sale and servicing of local bonds.
- Perform any other function required or authorized by law.
- Pursuant to ORS Chapter 183, adopt rules necessary to carry out its duties.

The MDAC strives to improve existing services and to initiate new programs and legislation aimed at lowering borrowing costs and improving debt management practices for local governments, particularly in the area of capital planning and debt administration.

Debt Management Division staff provides Commission staffing and services to local issuers. The MDAC staff can provide information on various aspects of bond sales, including general items such as current market conditions, broad guidance on Oregon State laws and potential financing alternatives.

Annual Report

State law ORS 287A.634requires the MDAC to prepare an annual report describing activities of the Commission in the preceding year. This report is available on the Debt Management Division website.

Oregon Bond Calendar

The MDAC keeps a record of upcoming bond sales of local districts and State agencies in Oregon and monitors bond market trends and interest rates. The *Bond Calendar* is available at no charge and may be obtained on the Debt Management Division web site or via email at DMD@ost.state.or.us. It is distributed to interested entities in the state including banks, underwriters, local government organizations, and the general public. To optimize marketing of all Oregon bonds, issuers should review the *Bond Calendar* to minimize scheduling conflicts with other issuers.

The *Bond Calendar* lists all planned, completed, and postponed bond sales for competitive, negotiated, or privately placed sales. This information is based upon notification of issues (via the MDAC Form 1) and Preliminary and Final Official Statements received from municipalities that issue bonds. Also included in the *Bond Calendar* are events related to municipal bonds such as election dates, bond election results, and the *Bond Index* (a measure of bond interest rate trading levels in the secondary market). The index is a weekly average obtained from bond dealers in Oregon for ten and twenty year maturities of both State of Oregon GO bonds and local (A-rated) unlimited general obligation (ULTGO) bonds and provides a handy reference for the trend and level of tax exempt bond interest rates in Oregon.

Statewide Database

The Debt Management Division maintains a database of all outstanding bond issues for all municipalities in the state. For each bond issue sold, the Bond Tracker database is populated with information obtained from the MDAC forms. The system is updated annually with revised population statistics and true cash values of tax code areas for Oregon municipal districts in order to calculate overlapping debt for issuers with a reported tax base.

Pursuant to the requirements of ORS 287A.634, the Debt Management Division requests municipal districts verify their long-term financial debt every other year. This is done to ensure the accuracy of information contained in the Bond Tracker system and is especially important in reporting municipal district overlapping debt for disclosure purposes. Each municipality is asked to respond - either acknowledging the amounts are correct or, if inaccurate, the municipality is asked to correct inaccurate data or add missing data.

Overlapping Debt Report

Using the Bond Tracker system, the Debt Management Division is able to aggregate information on the municipality's total debt issued (to which any given jurisdiction is subject). This information is used to create a standardized report called the "Overlapping Debt Report." The report includes information concerning maturity dates, amounts, interest rates, and overlapping percentages as a proportion of True Cash Value (TCV) for all general obligation debt. For example, the residents of a certain city may be indebted through government borrowing by their city, county, school district, and various special districts such as water, sewer, fire, etc.

Free overlapping debt reports may be requested from the Treasurer's Office by municipalities contemplating issuing or retiring debt, by capital market analysts, rating agencies, or by the public.