





# Public Financing 101: The Municipal Finance Team

At the start of the pandemic, the word team often conjured heroic teams of doctors, nurses, and emergency medical technicians on the frontlines helping the victims of COVID-19, or maybe the teams of reporters, editors, producers, and photographers who worked to deliver accurate and breaking news about the worldwide health crisis.

Now that the country has turned the corner on the pandemic, the word teams may have a happier meaning, like the Eagles, the Steelers, the Flyers, or the Penguins.

However, one type of team that is likely not at the forefront of anyone's mind is a financing team.

While its work doesn't involve saving lives or delivering critical news, these teams matter when it comes time for a municipality to borrow money for capital projects or to refund debt.

It is important for officials to understand who comprises such a team and how it can help with financing, while allowing the borough to remain focused on its essential matters and challenges.

## *Municipal Financing Team*

Behind every municipal financing is a team of professionals, each of whom play different roles in structuring the financing and

seeing it through to a successful settlement.

Like a group of players on a soccer field with their separate roles and responsibilities, each professional on the financing team plays a different role and carries varied responsibilities in navigating a financing transaction.

At the same time, they share the common goal of accomplishing the lawful issuance of debt and successfully closing the financing in a manner that provides the most benefit to the issuer, which in this case is a municipality or its entities.

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## The Captain

Teams are often led by captains, who take the lead and help dictate the team's actions. The role of bond counsel often takes on the role of the unofficial "captain."

Under state and federal law, municipalities can issue debt on a tax-exempt basis, which generally allows municipalities to borrow money at rates lower than those at taxable commercial rates.

Working with the borough solicitor, the bond counsel reviews the proposed financing for compliance with federal tax and securities laws, as well as compliance with the Local Government Unit Debt Act, which is PA's law governing the issuance of the debt by school districts, municipalities, and other "local government units."

As mentioned above, bond counsel often leads the financing team by coordinating the other "players" and guiding the financing to make certain that the debt issuance adheres and conforms to the nuanced federal legal requirements concerning tax-exempt indebtedness, namely those set forth in the Internal Revenue Code of 1986 and any other pertinent regulations.

Bond counsel typically drafts the relevant debt legislation (resolution or ordinance) and prepares the necessary documentation relative to tax-exempt debt.



As a condition of the closing, bond counsel renders an opinion to the bondholders regarding, among other things, the tax-exempt status of the debt under current federal and state law.

Public finance attorneys, who act as bond counsels, closely monitor, and track all changes and updates in law. For example, there were the elimination of tax-exempt advance refundings by issuers under federal law and the extension of the maturity date for certain tax and revenue anticipation notes under state law.

## 'Local' Solicitor

Bond counsel works with the borough's solicitor as the attorney most intimately familiar with the laws and regulations that govern the specific municipality and its entities.

The solicitor reviews any debt legislation, ensuring that local codes and the Sunshine Act are complied with. Additionally, the solicitor reviews the closing documents and will ultimately render an opinion on behalf of the issuer (the borough) regarding certain aspects of the debt issuance.

## Financial Advisers

Another key player are the financial advisers, who are hired by and represent the issuer of the debt. They can assist with budgeting in determining whether:

- To borrow funds or use reserves to fund the costs and expenses of a capital project, and
- To refund or restructure outstanding debt with the aim of saving money.

Financial advisers also play a role in explaining the pros and cons of financing vehicles, namely, whether to finance with bank loans (private placement with a banking institution), borrowing from a municipal bond pool, or to issue bonds (to the public bond market) along with the timing and methods of incurring debt.

They often coordinate the financing schedule with the schedule of the capital project construction established by engineers or architects in order to dovetail the financing with the timing of the capital project to ensure that funds are available when needed (and not too early).

## Bond Underwriter

If a bond issue is the avenue selected as the method for incurring debt, the fourth key player on the field is the underwriter, or purchaser, of the bonds.

The underwriter is the institution that is selected by (but does not represent) the issuer and is responsible for the marketing and selling of the bonds to investors.

Typically, the underwriter oversees the preparation of the offering document (referred to as a prospectus or Official Statement) that contains information about the issuer and its finances so investors can make an informed decision about investing in the bonds.

Sometimes, an underwriter also will hire their own attorney to represent them in a financing.

## Fielding a Team

Using experienced players on this particular field will provide the essential footing for a smooth financing transaction. While this article simplifies some of the elements of financing, it is meant to offer insight into who typically makes up a financing team and their roles.

With the increasingly complicated regulatory environment, it is more important now than ever to select a strong team for any financing project. While the impact of the pandemic may have halted some public finance projects, as the country enters the pandemic recovery phase, the number of capital projects being undertaken is increasing.

This is good news for builders, construction companies, and workers, but most of all, it's good for communities that will benefit from improved or new facilities, safer infrastructure, or better access for people of all abilities. The effort behind the financing to complete this work requires a solid team.



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**Editor's note:** Eckert Seamans is the administrator of The Employment Alliance of Municipalities (TEAM) Program offered through the PA State Association of Boroughs. TEAM was designed to provide members with experienced counseling and legal advice on difficult labor and employment issues facing public employers. Learn more at [boroughs.org/programs](http://boroughs.org/programs). 

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