

Bond Financing: Some Basic Dos and Don'ts

Overview

- Public Finance Fundamentals
- Classifications of Municipal Bonds
- Disclosure
- Post Issuance Compliance
- Arbitrage
- Affordable Housing Financing
- New Trends

Public Finance Fundamentals

- Financing Options
 - Pay As You Go
 - Long Term Bonds
 - Bank Loans
 - Interim Financing / Line of Credit

Public Finance Fundamentals

- **Core Team**

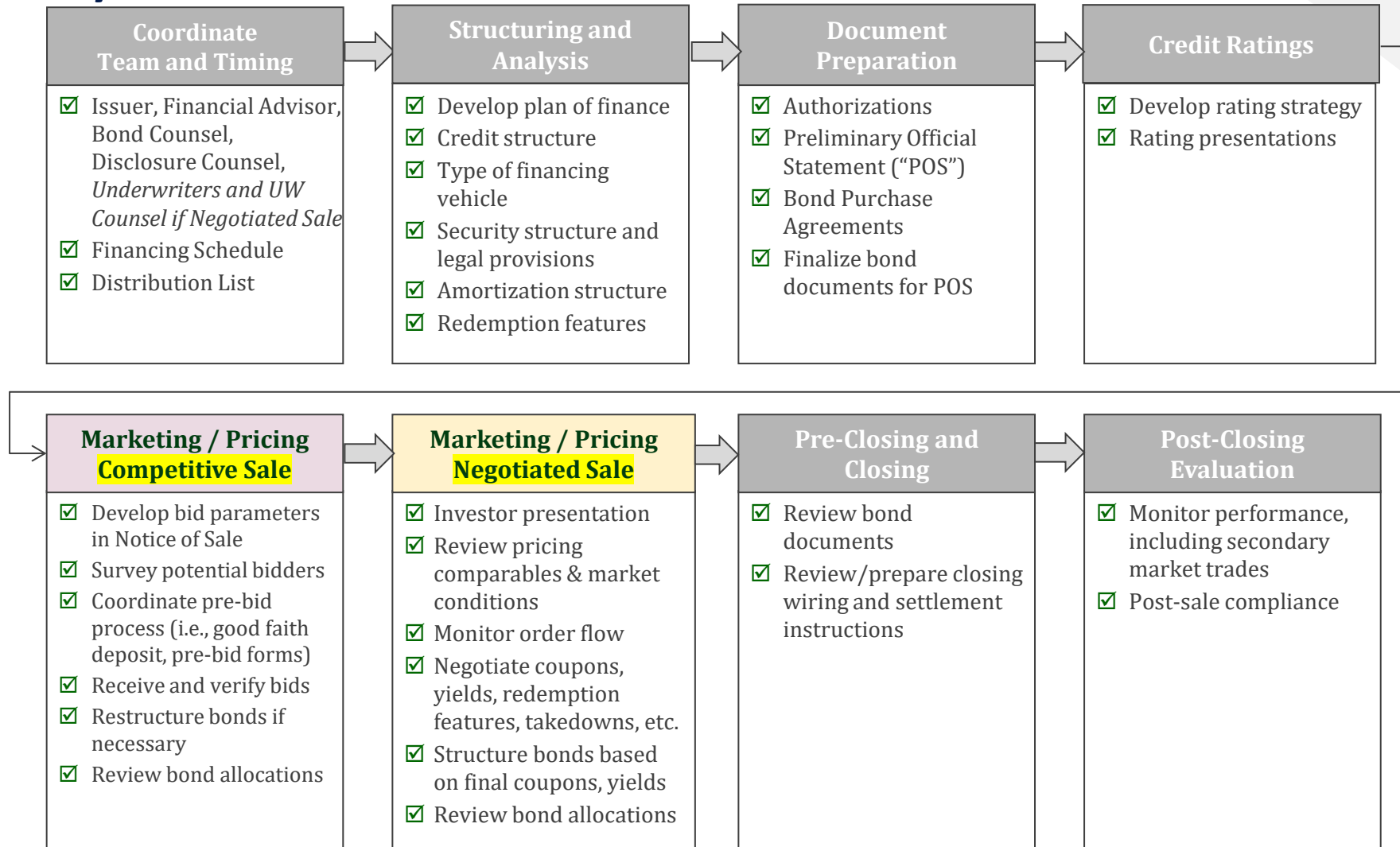
- Issuer
 - Governing Body, City / County Manager, Finance Director, Budget Director, Issuer's Counsel, Other (Utilities Director)
- Financial Advisor
- Bond Counsel
- Disclosure Counsel

- **Transaction Dependent Team Members**

- Underwriter
- Underwriter's Counsel (if negotiated sale)
- Paying Agent/Trustee
- Verification Agent (if refunding)
- Other specialty consultants and/or service providers (rate consultant/engineer)

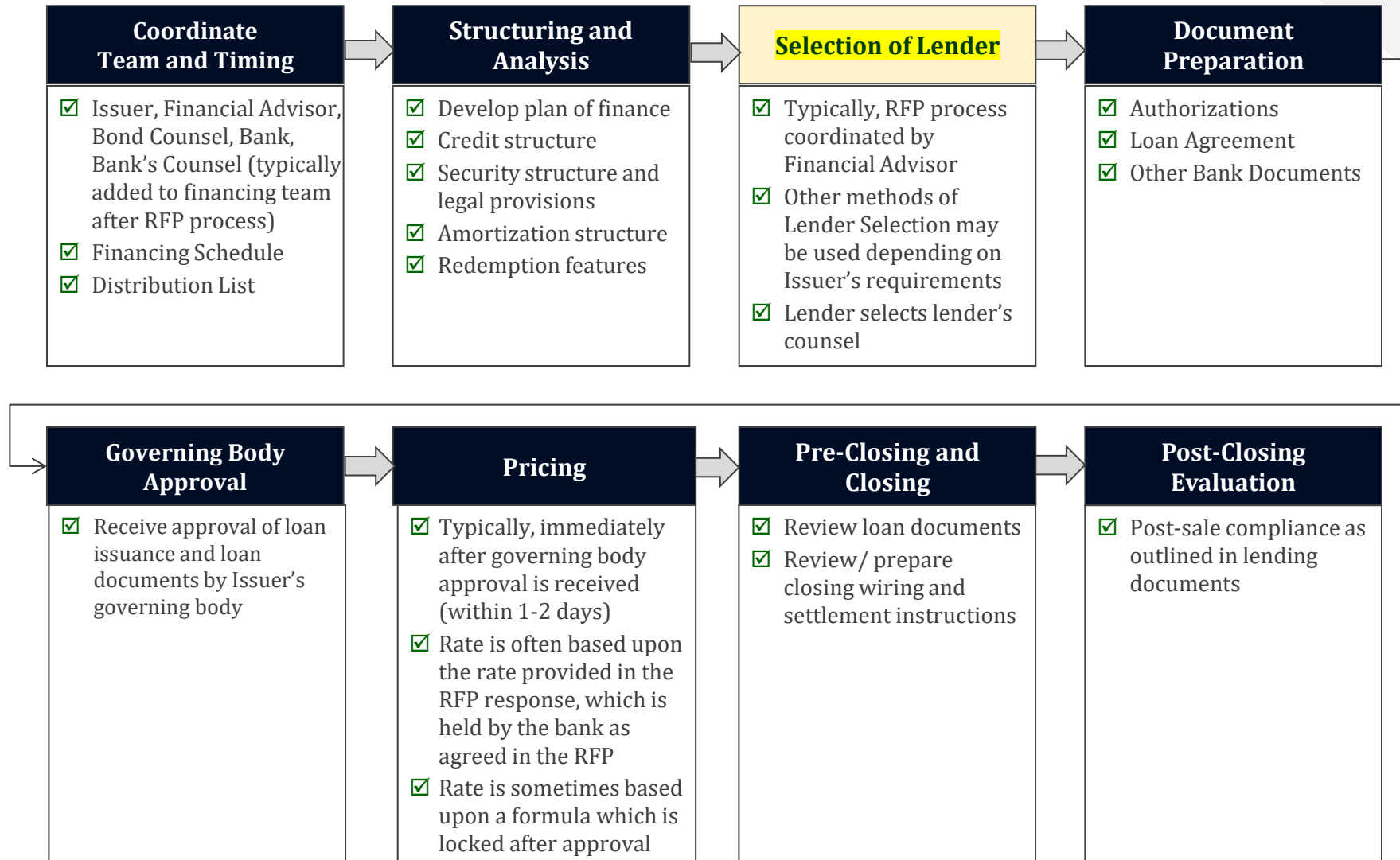
Public Finance Fundamentals

Summary of Bond Issuance Process



Public Finance Fundamentals

Summary of Loan Issuance Process



Classifications of Municipal Bonds

Under Florida law and laws of most states, two significant classifications of public debt are used:

- A. General Obligation Bonds
- B. Revenue Bonds



Classifications of Municipal Bonds

General Obligation Bonds

1. Security is the full faith and credit of an issuer with taxing power.
2. Subject to referendum and may only be issued for “capital projects.”
3. General description of the provisions of Florida law relating to the holding of a referendum election may be found in [Chapter 100](#) and [Chapter 101](#), Florida Statutes.
4. Generally, a second referendum **is not** required for bonds issued to refund or refinance bonds which were subject to the referendum if the refunding or refinancing results in a lower net average interest rate.
5. Maturing more than 12 months (if less than 12 months a referendum is not required).

Classifications of Municipal Bonds

General Obligation Bonds – Bond Referenda Matters

- Ballot must include:
 - (i) the amount of the bonds to be issued;
 - (ii) a statement as to the purpose for the bonds (not exceeding 75 words); and
 - (iii) the rate of interest on the bonds (a statement that the interest rate shall not exceed the maximum rate permitted by law is sufficient).
- Notice of bond referendum must be:
 - (i) published in a newspaper of general circulation at least 30 days prior to the election; and
 - (ii) published at least twice, once in the 5th week and once in the 3rd week prior to the week in which the election is to be held.

Classifications of Municipal Bonds



Revenue Bonds

1. Revenue bonds are debt obligations in which:
 - (i) the full faith and credit of an issuer with taxing power is not pledged, but are payable from specific revenue sources; and
 - (ii) Do not permit the bondholders to compel taxation or legislative appropriation of funds not pledged for payment of debt service.
2. Generally, no voter approval is required under state law prior to issuance.

Classifications of Municipal Bonds

Revenue Bonds

Examples:

- (i) Bonds payable from utility revenues (i.e. water and sewer revenues);
- (ii) Bonds payable from various sources of non-ad valorem revenues such as excise taxes, gas taxes or state revenue sharing moneys (e.g. Guaranteed Entitlement Revenues and the Local Government Half-Cent Sales Tax).

“Covenant to Budget & Appropriate”

- Secured by a covenant of the local government to budget and appropriate legally available non-ad valorem revenues for the payment of debt service.
- Not secured by a specific lien upon or pledge of specific non-ad valorem revenues.
- Covenant is subject to the requirement that the local government pay for all essential governmental services.

Classifications of Municipal Bonds

Revenue Bonds

Conduit Bonds

- Includes conduit bonds issued by:
 - i. local Industrial Development Authorities;
 - ii. Housing Finance Authorities;
 - iii. Health Facility Authorities; and
 - iv. other governmental units on behalf of an underlying borrower.
- May also be issued directly by cities, counties and some other governmental entities.
- Usually payable solely from revenues derived from loan, lease or installment sale payments with the private party utilizing bond proceeds.
- Specifically authorized by statute, for example, [Ch. 243](#) (Educational Facilities), [Ch. 154](#) (Health Facilities), and [Ch. 159](#) (Industrial Development, Housing Development and Research Development).

Disclosure

- Bonds of a local government which are publicly sold (by competitive bid or negotiated sale) are typically sold by an underwriter through the use of a disclosure document (usually an “official statement”).
- The official statement includes a description of the terms of the bonds, the security for the bonds and financial information about the issuer and the source of payment (water and sewer revenues, sales tax, ad valorem taxes, etc.).
- The official statement speaks only as of its date and must be complete and accurate as of its date in order to comply with the antifraud provisions of the federal securities laws.
- In November 1994, the SEC released amendments (the “Amendments”) to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (the “Rule”) which effectively requires issuers to commit to continuing disclosure as a condition to access the public bond markets.
- In July 2009, May 2010 and October 2018, pursuant to Release No. 34-59062, and in May 2010, pursuant to Release No. 34-62184, Release No. 34-62184 and Release 34-83885, respectively, the SEC adopted additional amendments to the Rule.

Disclosure

Key Elements of 1994 Amendments to Rule 15c2-12

- Except for certain exemptions, the Amendments require the issuer or other obligated person for which information is provided in the final official statement (either individually or in combination with other issuers or obligated persons) to covenant to provide both annual financial information (and audited financial statements, if and when available) and material event disclosure (the "Continuing Disclosure Undertaking").
- As a practical matter, if neither the issuer nor an obligated person agree to the required Continuing Disclosure Undertaking, the offering will be effectively shut out of the municipal securities market under the Rule, unless the issue qualifies for one of the exemptions.

Disclosure

Key Elements of 1994 Amendments to Rule 15c2-12

“Obligated Persons”

- The Continuing Disclosure Undertaking is required of the issuer or other obligated person for whom information is provided in the final official statement.
- An "obligated person" is defined to mean a person who is either generally, or through an enterprise fund or account of such person, committed by contract or other arrangement to support payment of all or part of the obligations on municipal securities, other than providers of municipal bond insurance, letters of credit or other liquidity facilities.
- An entity may be an obligated person even though it has no direct contract with bondholders. For example, the obligations supported by the obligated person can be obligations which run only to the issuer, such as a lease, loan agreement or other conduit structure or purchase agreement, a take-or-pay contract, or other contract or arrangement structured to support payment of the obligations relating to the municipal securities.

Disclosure

Key Elements of 1994 Amendments to Rule 15c2-12

- Annual Information
 - Includes annual financial information for each obligated person for whom financial information or operating data was included in the final official statement and, if not submitted with the annual financial information, includes annual audited financial statements if and when available.
 - Must be filed. The timing is not prescribed in the Rule; rather, it is to be set forth in the undertaking.
- Failure Notice
 - The issuer or obligated person must make certain notifications in the event the required annual financial information is not provided on or before the date required in the written undertaking.

Disclosure

Key Elements of the 2010 Amendments

- Summary
 - The SEC, continuing with its theme of improving the quality, timing and dissemination of disclosure in the municipal securities market, issued Release No. 34-62184 which provided for certain amendments to Rule 15c2-12.
- The amendments to the Rule affect the secondary market disclosure requirements of the Rule, which require brokers, dealers, and municipal securities dealers, prior to purchasing or selling municipal securities in connection with an offering, to reasonably determine that an issuer of such municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement, has undertaken in a written agreement to provide to the holders of such securities certain financial information and to report the occurrence or certain material events relating to the securities.

Disclosure

Key Elements of the 2010 Amendments

- Timeframe for Submitting Event Notices
 - The SEC has modified the Rule to require a participating underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit notices of certain material events to the MSRB "in a timely manner not in excess of ten business days after the occurrence of the event," instead of just "in a timely manner," as the Rule previously provided. This amendment ties the ten business days to the occurrence of the specific event, as opposed to knowledge of such an event by the issuer or obligated person.
- Materiality Determinations
 - The SEC deleted the condition in the Rule that presently provided that notices of all of the listed events need be made only "if material," and removed the materiality determination for certain events.

Disclosure

Material Event Notices

- Event Notices
 - Principal and interest payment delinquencies.
 - Non-Payment related defaults, if material
 - Unscheduled draws on debt service reserves reflecting financial difficulties
 - Unscheduled draws on credit enhancements reflecting financial difficulties
 - Substitution of credit or liquidity providers, or their failure to perform
 - Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security
 - Modifications to rights of security holders, if material
 - Bond calls, if material, and tender offers
 - Defeasances
 - Release, substitution, or sale of property securing repayment of the securities, if material

Disclosure

Material Event Notices (cont.)

- Event Notices
 - Rating changes.
 - Bankruptcy, insolvency, receivership or similar event of the obligated person
 - The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
 - Appointment of a successor or additional trustee or the change of name of a trustee, if material
 - 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
 - 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.

Disclosure

Additional and Voluntary Disclosures to the MSRB

The SEC has also given approval to the MSRB to accept additional types of filings on its Electronic Municipal Market Access (“EMMA”) website. Underwriters of municipal securities will be required to provide – and issuers will be able to provide voluntarily – information to assist investors and other market participants in assessing the availability of ongoing disclosures made by issuers through the EMMA website.

Disclosure

2019 Amendments

The 2019 Amendments, effective February 22, 2019, add two new events:

- Incurrence of financial obligation of the issuer or obligated person, if material (a “new obligation event”), or an amendment to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material (a “revised obligation event”); and
- A default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, which reflect financial difficulties (a “financial distress event”), (Note the lack of materiality standard in this event when compared to the description above.)

Post Issuance Compliance

- The IRS requires issuers to certify on Form 8038 and Form 8038-G if they have written procedures in place to monitor and remediate any nonqualified tax-exempt bonds.
- In 2012, the IRS reported the results of a compliance check on governmental bond issuers. While a majority of issuers reported that they had written compliance procedures in place, the IRS found that fewer than 20% of issuers had implemented specific written procedures or ad hoc processes at the level the IRS deems appropriate.
- A compliance plan is intended to provide written procedures for handling matters that arise after issuance of bonds. The plan should detail record retention policies, private use monitoring, arbitrage rebate and yield restriction, expenditure of bond proceeds, remedial actions and other issues that may arise over the life of a bond issue.

Post Issuance Compliance



Publication 5005

In 2019, the IRS released its Publication 5005, "Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds," which provides an overview for state and local governments of the responsibilities of conduit issuers with respect to tax compliance in municipal financing arrangements, commonly known as conduit financings. Because the conduit issuer is treated as a "taxpayer" for federal tax purposes and procedures, the issuer is the party generally responsible for tax compliance. However, the bond documents generally provide for delegation of certain responsibilities to the conduit borrower.

Post Issuance Compliance

Publication 5005 lists several items the IRS suggests that issuers consider when developing such post-issuance compliance procedures:

- Designating a particular conduit issuer official to assist in post-issuance compliance;
- Requiring conduit borrowers to identify a particular official responsible for assisting the issuer with post-issuance compliance monitoring;
- Providing training or other technical support to designated official(s) of the conduit issuer and conduit borrower.
- Requiring the conduit borrower to demonstrate that it has adopted written post-issuance compliance monitoring procedures before the approval of a bond issue;
- Designating time intervals within which compliance monitoring activities will be completed by the issuer and borrower;
- Timely completing remedial actions to correct or otherwise resolve identified noncompliance; and
- Requiring conduit borrowers to notify the conduit issuer of the completion of post-issuance compliance monitoring activities.

Post Issuance Compliance

Summary

- Local government issuers of tax-exempt bonds should have in place compliance programs to monitor and document activities post issuance.
- This encourages the prevention of problems and timely remediation, should a problem arise.

Arbitrage

- Hedge Bonds - Cannot lawfully issue tax-exempt bonds for the sole purpose of investing the proceeds.
- What is Arbitrage?
 - Bond issuer issues tax-exempt bonds and invests the proceeds from the sale of the bonds at an interest rate materially higher than the interest rate on the bonds;
 - Subject to certain exceptions, this is impermissible;
 - The IRS wants the tax-exempt bond proceeds to be spent as quickly as possible; at the time the bonds are issued the issuer must reasonably expect to spend all of the proceeds within three years.
 - The IRS does not want to encourage the over-issuance of bonds;
 - Subject to certain exceptions, earned arbitrage must be paid to the IRS, therefore eliminating the incentive to issue arbitrage bonds.
 - Arbitrage boils down to two questions:
 - Can you earn it?
 - Can you keep it?

Arbitrage

Arbitrage Exceptions – Can you Earn it?

- Three Year Temporary Period Exception (3 Tests): For Bonds Issued for a Capital Project
 - Expenditure Test: 85% expended in 3 years;
 - Time Test: Substantial binding commitment to spend 5% within 6 months; and
 - Due Diligence Test: Project completion and expenditures move with due diligence
- Reserve & Replacement fund Exception (3 Prong Test): Amount that can be invested without regard to yield is: Lesser of (1) 10% of the stated principal amount; (2) maximum annual debt service; or (3) 125% of annual debt service

Arbitrage

Arbitrage Exceptions – Can you Keep it?

- Small Issuer Exception: Generally, issuer does not reasonably expect to issue more than \$5 million of bonds in a calendar year
- Spending Exceptions:
 - 6 Month Exception: 100% of gross proceeds within 6 months of issuance;
 - 18 Month Exception: (i) 15% of gross proceeds within 6 months of issue date; (ii) 60% of gross proceeds within 12 months; and (iii) 100% of the gross proceeds within 18 months
 - Two Year-Construction Exception: Must be for a Construction Project (75% of Proceeds)
 - 10% of construction proceeds within 6 months;
 - 45% within 1 year;
 - 75% within 18 months; and
 - 100% within 2 years

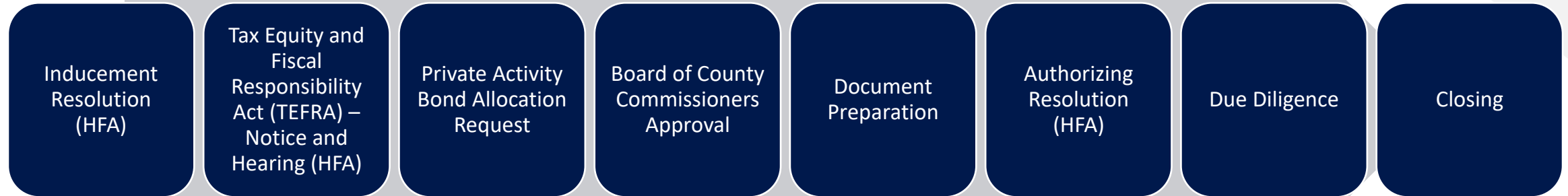
Multifamily Affordable Housing Financing

- Overview
 - Private Activity Bonds / Conduit Bonds (see slide 12)
 - Bond Approval and Closing Process
 - New Legislation for Private Activity Bonds – Impacts of SB 7054
 - Examples of State, County and Municipal Programs



Multifamily Affordable Housing Financing

Bond Approval and Closing Process



Multifamily Affordable Housing Financing

- How Does This Impact You?
 - Coordinating with the HFA Team
 - Recurring calls
 - Review and negotiation of documents (e.g. subordination agreements, land use restriction agreements, etc.)
 - Compliance monitoring

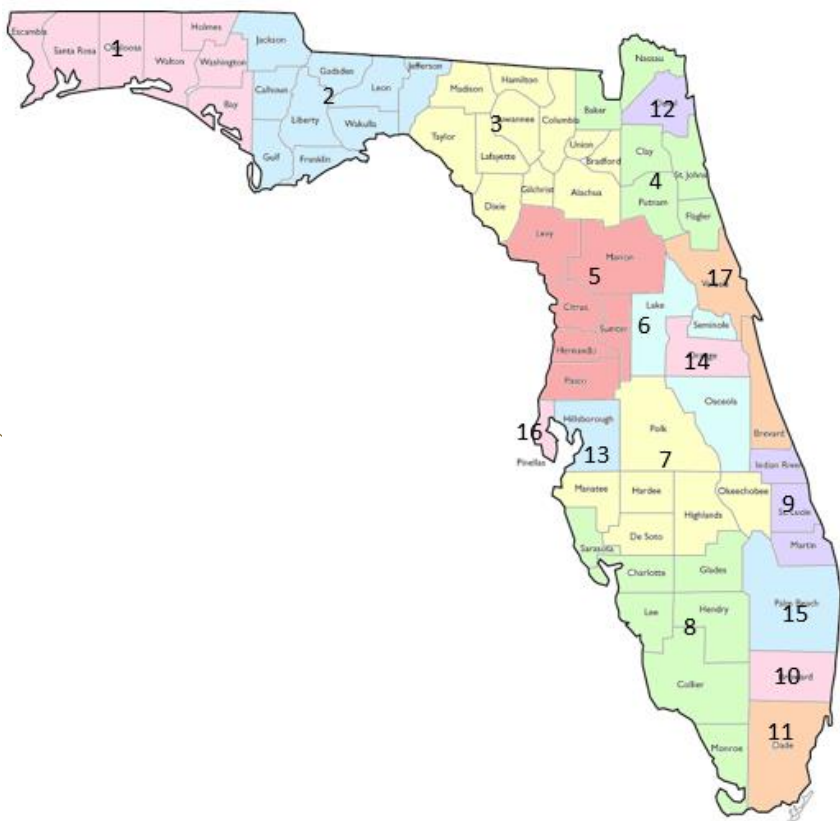
Multifamily Affordable Housing Financing

- New Legislation for Private Activity Bonds - Impacts of SB 7054
 - Regions will be exclusively for affordable housing PABs
 - Large counties maintain their own regions
 - Consolidation of less populous regions and reconfiguration of underused regions increases volume cap available to HFAs
 - Effective January 1, 2025

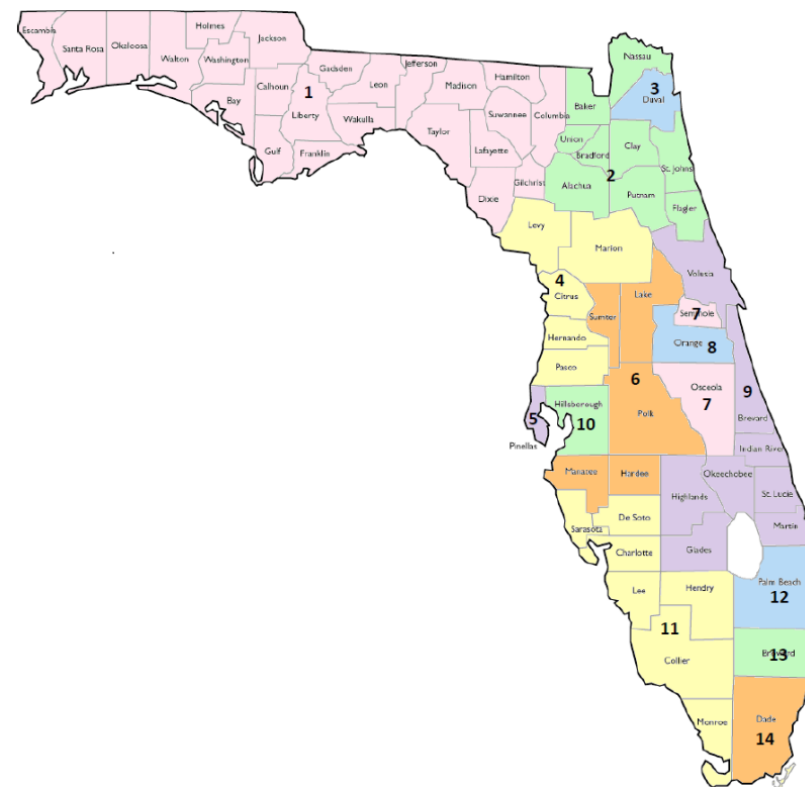
Multifamily Affordable Housing Financing

Changes to Private Activity Bonds Legislation – SB 7054

2024



2025



Multifamily Affordable Housing Financing

Breakdown of Volume Cap to Each Region

2024

| Region | Amount | Percent |
|--------|------------------|---------|
| 1 | \$64,606,332.38 | 4.74% |
| 2 | \$30,006,212.63 | 2.20% |
| 3 | \$33,318,214.11 | 2.44% |
| 4 | \$53,174,007.80 | 3.90% |
| 5 | \$95,351,150.75 | 6.99% |
| 6 | \$80,823,650.36 | 5.92% |
| 7 | \$86,909,718.31 | 6.37% |
| 8 | \$120,969,974.10 | 8.87% |
| 9 | \$42,150,861.05 | 3.09% |
| 10 | \$118,966,521.84 | 8.72% |
| 11 | \$166,911,396.26 | 12.23% |
| 12 | \$63,370,600.90 | 4.64% |
| 13 | \$92,922,847.97 | 6.81% |
| 14 | \$89,994,465.76 | 6.60% |
| 15 | \$92,391,603.99 | 6.77% |
| 16 | \$58,753,847.81 | 4.31% |
| 17 | \$73,798,968.99 | 5.41% |

2025

| Region | Amount | Percent |
|--------|------------------|---------|
| 1 | \$111,488,715.83 | 7.89% |
| 2 | \$76,086,826.18 | 5.38% |
| 3 | \$65,634,798.10 | 4.64% |
| 4 | \$89,060,973.96 | 6.30% |
| 5 | \$60,853,090.93 | 4.31% |
| 6 | \$114,433,696.53 | 8.10% |
| 7 | \$57,817,269.71 | 4.09% |
| 8 | \$93,209,919.21 | 6.60% |
| 9 | \$129,867,655.51 | 9.19% |
| 10 | \$96,242,930.93 | 6.81% |
| 11 | \$126,689,611.15 | 8.96% |
| 12 | \$95,692,705.89 | 6.77% |
| 13 | \$123,217,131.14 | 8.72% |
| 14 | \$172,875,049.92 | 12.23% |

Multifamily Affordable Housing Financing

- Examples of State, County and Municipal Programs
 - Florida Housing Finance Corporation
 - Multifamily Housing Revenue Bonds
 - State Apartment Incentive Loan Program
 - Extremely Low-Income Loan Program
 - National Housing Trust Fund Loan Program
 - HOME Program
 - Community Development Block Grant—Disaster Recovery Loan Program
 - Various Grant Programs
 - Be on the lookout for new programs!

New Trends in Public Finance

- Variable Rate Debt
- Audits
- Inflation

Resources

- [Online Sunshine](#)
- [EMMA](#)
- [IRS: Post-Issuance Compliance](#)
- [SEC: Municipalities Continuing Disclosure Cooperation Initiative](#)
- [State of Florida Division of Bond Finance](#)