Government Finance Officers Association
What is Advice | Resource

Recent enforcement actions by the U.S. Securities and Exchange Commission (SEC) against unregistered municipal advisors have highlighted the importance of working with properly registered municipal advisors. State and local governments should ensure that professionals providing advice that constitutes municipal advisory activity are appropriately registered as municipal advisors when required under federal securities laws.

Under SEC rules, a municipal advisor is a person that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.

Governments often engage a variety of professionals in connection with bond issuances, direct placements, bank loans, public-private partnerships (P3s), and other financing transactions. In some cases, a consultant or advisor may provide recommendations that constitute municipal advisory activity. Any individual or firm providing such advice must be a registered municipal advisor, unless a specific exemption or exclusion applies.[1]

Municipal advisors are subject to SEC and Municipal Securities Rulemaking Board (MSRB) regulations and owe a fiduciary duty to their municipal entity clients, which includes a **duty of care** and a **duty of loyalty**. If a professional is advising your organization on the structure, timing, terms, or other key elements of a financing transaction, confirm:

- The MA firm is registered as a municipal advisor;
- The individual municipal advisor(s) is registered, and has passed the MSRB's Series 50 qualifications exam;
- Any claimed exemption from registration and the basis for it; and
- The scope of services and responsibilities are clearly documented.

Governments can verify municipal advisor registration status through the **MSRB's Municipal Advisor Registry**.

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[1] Exclusions and exemptions are narrow and apply only to specified activities. Examples include: underwriters, only for underwriting services on a transaction for which they have been engaged; attorneys, only for services of a traditional legal nature; engineers, only for engineering advice; accountants, only for audit, attest, or financial statement services; SEC-registered investment advisers, only for advice on the investment of bond proceeds; and banks, only for banking activities such as deposits, loans, or serving as trustee or paying agent. Employees and officials of a municipal entity acting within the scope of their duties are also excluded. Separate exemptions exist for certain responses to qualifying RFPs/RFQs and for advice given where the government has retained a municipal advisor and the underwriter has confirmed the MA is independent to their firm, and the government states it will rely on that advisor. See the **SEC Office of Municipal Securities' Registration of Municipal Advisors FAQs** for details

Why This Matters For Your Government

The obligation to register rests with the advisor, but the risks of working with an unregistered advisor fall on the government. Registered municipal advisors are bound by SEC and MSRB requirements designed to protect their municipal entity clients, including a fiduciary duty, disclosure of conflicts of interest and compensation arrangements, and professional qualification standards. A government that relies on advice from someone who is not subject to these requirements may face a greater risk of:

- Receiving advice that is not fully independent or in the government's best interest;
- Undisclosed conflicts of interest, including compensation tied to the type or size of the financing or to the closing of the transaction;
- Less efficient pricing, terms, or structure, because the advisor may not be positioned to objectively evaluate financing alternatives or the work of other professionals on the transaction;
- Incomplete analysis of long-term costs, risks, and alternatives, including whether a particular financing product or structure is suitable for the government;
- Limited regulatory oversight of, and recourse against, the advisor if concerns arise; and
- Unclear roles and responsibilities among the parties to the transaction, which can lead to confusion about who is actually representing the government's interests.

If you are uncertain whether a professional's activities may constitute municipal advisory activity, discuss their role and responsibilities and consider engaging a registered municipal advisor to represent the government's interests.

GFOA's Best Practice, Selecting and Managing Municipal Advisors, recommends that governments consider engaging a municipal advisor before undertaking debt issuances, particularly when the entity lacks dedicated in-house debt management expertise or regular access to current market information. When procuring municipal advisory services, governments should use a competitive selection process and carefully evaluate qualifications, experience, conflicts of interest, and proposed scope of services.

Resources

- **GFOA Best Practice: Selecting and Managing Municipal Advisors**
- **GFOA Primer: Municipal Advisors and Issuers**
- **GFOA Advisory: Public Private Partnerships**
- **SEC OMS Statement: Responsibilities of Regulated Entities to Municipal Issuers**
- **SEC Information Bulletin: MAs and Charter Schools**
- **SEC OMS Statement: Unregistered MA Activity in P3s**