MEMORANDUM

To: Public Comment File S7-01-17

From: Trace W. Rakestraw
Counsel to Commissioner Kara M. Stein
U.S. Securities and Exchange Commission

Date: 7/16/18

Re: Meeting with a representative from the Government Finance Officers Association ("GFOA") and the State of Florida Division of Bond Finance

On July 13, 2018, Commissioner Stein, Sirimal Mukerjee (Counsel to Commissioner Stein), and Trace Rakestraw (Counsel to Commissioner Stein) met with the following representatives from GFOA and the State of Florida Division of Bond Finance:

- Ryan Lawler, Manager, Research and Consulting Center (GFOA)
- J. Ben Watkins III, Director (State of Florida Division of Bond Finance)

Among other things, the participants discussed proposed rule 15c2-12, including the information provided by GFOA set forth in Annex A.

ANNEX A

[Attachment]

Government Finance Officers Association

BEST PRACTICE

Post-Issuance Policies and Procedures

BACKGROUND:

Bonds issued by state and local governments are generally subject to ongoing monitoring and reporting with respect to federal disclosure requirements pursuant to their continuing disclosure agreements (CDAs), as well as compliance with federal tax requirements specifically related to tax-exempt bonds. In addition to federal securities and tax requirements, issuers may face a variety of other compliance obligations, such as bond indenture requirements, state and local law and policy requirements.

Comprehensive post-issuance compliance consists of policies and procedures designed to assist an issuer of bonds in complying with all of the relevant requirements that apply to each series of bonds from the date they are issued until the bonds are no longer outstanding.

RECOMMENDATION:

GFOA recommends issuers of bonds or other debt obligations develop and adopt formal, written post-issuance compliance policies and procedures to assist in meeting compliance requirements and in preventing, identifying and correcting possible violations that might occur during the term that bonds are outstanding. Such procedures will help an issuer mitigate the risk of violation and preempt enforcement action from federal parties. Issuers should revisit these policies and procedures at least every three years.

Policies and procedures at least consist of the following elements: a list of all of the compliance actions at the time that bonds are sold for each series of bonds; documentation of the source and frequency of such compliance requirements; and identification and assignment of compliance responsibilities to officers by title.

Designing a Comprehensive Post-Issuance Compliance Program:

- General Considerations – A post-issuance compliance program should reflect an issuer's size, resources and borrowing frequency. An issuer may decide to handle compliance in-house or to engage a third-party provider for some or all compliance activities including continuing disclosure, arbitrage rebate and monitoring of private business use and payments. In either case, the post-issuance compliance program should include the elements discussed below. Despite electing to outsource compliance responsibilities, issuers and the assigned issuer staff have the ultimate authority for ensuring that the compliance procedures are met in a timely and accurate manner.
- Responsible Staff Should Be Identified –Whether an issuer will conduct compliance in-house or will engage outside providers, a "chief compliance officer" with overall responsibility for

implementation of the program should be formally identified in policies and procedures. In a large organization, there may be staff in addition to the chief compliance officer that can be assigned specific responsibilities or the chief compliance officer can have authority to delegate where appropriate. Staff turnover is an especially important time to review the assignment of staff responsibilities. If third-party providers will be engaged to perform some or all of the activities, the program should specify how the providers will be engaged and monitored, as ultimately the liability for non-compliance is the issuer's. The chief compliance officer or officers should be designated by job title rather than name to assure continuity.

- Identify the Source of the Requirements Being Monitored – Issuers should identify the documents that set forth all of the requirements being monitored so that the compliance officer(s) can find details if necessary. Examples of such documents include the CDA, tax certificate, and bond indenture. Issuers should compile this list at the time of closing for each bond issue.
- Identify the Frequency of the Actions to Be Undertaken – To ensure compliance, issuers should review a compliance checklist at least annually. However, it may be advisable to provide for more frequent reviews in connection to specific events such as ongoing reviews, calculating arbitrage rebate liability, renewal of management contracts, or calculation of private business use.
- Monitor for Changes in Law and Regulations – An issuer needs to consistently and carefully monitor for changes to regulations, rules, new interpretive guidance or altered market practices and expectations.
- Establish a Deadline Reminder System –Where deadlines exist, a reminder system should be established and a back-up reminder is helpful in avoiding an oversight. Examples of deadlines include continuing disclosure filing dates and deadlines for meeting spend down exceptions for rebate compliance, paying rebate if applicable, and making final allocations of bond proceeds. Reminders should be set sufficiently in advance of deadlines to accommodate drafting and adequate review of documents prior to the required submission date.
- Identify Records to be Maintained and the Record Retention Period –Records necessary to ensure and document compliance should be maintained for the required time periods. The issuer should list the records being maintained and where or by whom. There may be various sources of records requirements, such as documentation of continuing disclosure filings, but most requirements for record retention will relate to IRS arbitrage rebate and tax-exemption compliance. In some cases, IRS record retention guidelines supersede and are longer than state and local requirements. Specific to arbitrage rebate and tax-exemption compliance, records must be maintained until full payment of the bonds and any refunding bonds plus three years. The following records should be maintained:
    - The bond transcript for each bond issue (which includes among other documents, the trust indenture, loan, lease, or other financing agreement, the relevant IRS Form 8038 (including Forms 8038-G or 8038, as applicable) with proof of filing, the bond counsel opinion and the tax agreement including all attachments, exhibits and any verification report).
    - Records of debt service payments for each issue of bonds.
    - Documentation evidencing the expenditure of bond proceeds, such as construction or contractor invoices and receipts for equipment and furnishings, bond trustee requisitions and project completion certificates, as well as records of any special allocations made for tax purposes including post-issuance changes in allocations.
    - Documentation evidencing the lease or use of bond-financed property by public and private sources, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use bond-financed property, or naming rights agreements.
    - Documentation pertaining to investment of bond proceeds, including the yield

calculations for each class of investments, actual investment income received from the investment of proceeds, investment agreements, payments made pursuant to investment agreements and rebate calculations and copies of any 8038-T or 8038-R filed with respect to the bonds.
    - Documentation pertaining to remedial action and other change-of-use records.
    - Amendments and other changes to the bond Documents (including interest rate conversions and defeasances).
    - Letters of credit and other guarantees for bond issues.
    - Interest rate swaps and other derivatives that are related to bond issues.
- Require Training for Responsible Officers – Periodic training for all identified staff responsible for post-issuance compliance should be identified and documented. The issuer should also determine whether the training can be done in-house or whether third-party conferences, courses or providers are appropriate.
- Describe Procedures to Identify and Correct Violations – Procedures should describe the review process to ensure compliance and describe what actions will be taken to correct any non-compliance. This may include engaging counsel or third-party advisors to assist in any remedial actions such as material event notices related to continuing disclosure requirements or dealing with IRS tax compliance issues by using the IRS Voluntary Closing Agreement Program.
- Adopt and Document a Post-Issuance Program–An issuer's post-issuance compliance procedures can be included in its general debt management policies or be stated separately. Procedures may be adopted by formal action of the issuer's governing board or be developed independently by management, and should be reviewed at least every three years.

Bond Indenture and Other Common Compliance Requirements:

Issuers should be aware that in addition to continuing disclosure and tax compliance requirements, there are often other legal documents, laws and regulations, policies, contractual requirements, and/or relationships that must be monitored on an ongoing basis. Some of the most common of these are included in this section.

- Bond Indentures/Bond Ordinance/Bond Resolution – Many bond issues have an ordinance and/or resolution that authorize and set many of the terms of the bond issue. Also, some bonds may have a bond indenture, which is a legal contract between the issuer and bond holders. These documents can contain a variety of stipulations including:
    - Notice requirements
    - Reporting requirements
    - Additional bonds tests
    - Permitted investments
    - Debt service payment requirements
    - Debt service reserve fund requirements
    - Bond insurance or surety bond requirements
    - Required accounts/segregation of funds
    - Requirements related to a trustee or paying agent
    - Restrictions on the use of bond proceeds
    - Redemption provisions
- State and Local Law – Issuers should work with bond counsel and/or legal counsel to determine if there are any ongoing requirements related to State or local law that must be monitored. These may include items such as notice requirements, public protest procedures, legal debt limits, or limitations on revenue used to pay debt service.
- Other Internal Finance Policies – Issuers may have debt or other financial policies that must

be monitored to ensure compliance. Common policy items that relate to debt issuance are debt limits, use of debt, debt ratios, and investment policies.

An issuer's compliance obligations with respect to bonds and other debt obligations do not end at the time of closing and receipt of funds. Following the steps described above will assist issuers in developing the comprehensive policies and procedures needed to ensure compliance with federal securities and tax law requirements, as well as any other obligations imposed by indenture, resolution, ordinance, state and local laws and internal policy direction.

Government Finance Officers Association

BEST PRACTICE

Using Technology for Disclosure

BACKGROUND:

Technology has fundamentally changed the way information is communicated and the manner in which municipal bond investors expect to receive information. Use of technology allows governments to efficiently communicate with municipal market participants and more effectively ensure compliance with disclosure requirements. Many governments use their websites to provide disclosure information electronically, including Preliminary Official Statements (POS), audited financial statements, feasibility reports, continuing disclosure filings and other important financial and budgetary information. Issuer websites are commonly used to post Independent Registered Municipal Advisor letters, for issuers who choose to utilize the Independent Registered Municipal Advisor (IRMA) exemption to the Securities and Exchange Commissions Municipal Advisor Rule. Issuer websites have also been used in addition to, or in lieu of, traditional press releases to communicate important events.

The use of issuer websites, electronic distribution of Preliminary and Final Official Statements, and the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access platform (EMMA) have become important tools in promoting transparency, liquidity and efficiency in the credit markets. Guidance to governments on how to best incorporate web-based technology into their normal disclosure practices is important as delivery of electronic information becomes the norm.

RECOMMENDATION:

GFOA recommends that bond issuers use technology – including both their own websites and additional features of the EMMA platform – to disseminate information to the municipal securities market regarding their debt, financial condition and other related information. As of July 1, 2009, electronic posting of annual continuing disclosure information associated with a bond issue is required to be submitted via the MSRB's Electronic Municipal Market Access (EMMA) system. In addition to making bond sale documents, required disclosure, archived information and periodic financial information available to the market, websites can be an integral part of an effective investor relations program, (see *GFOA Best Practice: Maintaining an Investor Relations Program*).

If choosing to publish information on their own website, issuers are encouraged to also make a voluntary submission to EMMA with a hyperlink to the specific pages on your website that contains this information in order to assist investors and the public with finding your financial and disclosure information.

Making disclosure information more accessible will help improve the efficiency of the municipal market and can possibly lower borrowing costs by improving access to information relevant to determining the credit quality of an issuer's bonds. Advantages to issuers in using web-based technology for disseminating disclosure information include:

1. An efficient, low-cost medium for communicating timely information to investors.
2. Simultaneous release of disclosure information to the entire market, thus avoiding inappropriate preferential treatment of investors.
3. Retaining control of the content and timing of the formal release of information, assuring accuracy and completeness of information.
4. Availablity of the most current information, which can be provided to the market and updated as circumstances warrant.
5. Utility of websites in addition to or, depending on the circumstances, in lieu of, press releases to notify investors of significant events.
6. Acceleration and broadening the distribution of timely disclosure information to the market.
7. Enhancing an issuer's reputation in the credit markets and the strengthening of investor confidence in an issuer.
8. The consistent and ready availability of complete and timely disclosure information, which can make issuer bond offerings more attractive to investors.
9. Reduction of investor inquiries and improvement in the satisfaction of investor requests resulting in more accessible and less costly disclosure.

A government may also consider using electronic means to post interim unaudited and/or operating financial information that otherwise routinely prepared by your entity, to help investors and the public understand the finances of your government between annual filings. (See *GFOA Best Practice: Understanding your Continuing Disclosure Responsibilities*).

Issuers should evaluate cost considerations associated with providing disclosure information via an issuer-controlled website, such as the administrative time, effort and expense necessary to design, deploy and maintain a website used for disclosure. Typically, a government's website is developed to provide a wide variety of information for very different purposes. As such, it may be valuable to identify an area of the issuer's website exclusively dedicated to information specifically designed for investors. In any case, issuers should evaluate the costs and benefits of using their website for disclosure based on their own unique circumstances.

If an issuer-controlled website is used for disclosure purposes (in addition to EMMA), the government should consider the following issues related to design, deployment and monitoring of disclosure:

1. Terms of use should be included on the front page or access point to the website so that information users are aware of – or preferably required to acknowledge – limits on how the website is intended to be used. For example, this disclaimer should acknowledge that the information does not constitute an offer to sell bonds, the information speaks only as of its stated date, and the issuer has no express or implied obligation to continuously update information. It is strongly advised to consult with your legal counsel in determining appropriate disclaimer language to be included and periodically reviewing and/or updating language as needed.
2. Information that is solely intended for investors should be segregated from other information and clearly identified as being intended for investors.
3. A formal process for reviewing and approving any information posted on the website should be required to ensure the accuracy, consistency and completeness of the information. Issuers should design internal controls to ensure that the information posted on the website is accurate, complete, consistent and current.
4. Outdated reports and other stale information (such as prior years CAFRs or audited financial statements and final Official Statements) should be clearly identified as for historical reference only. Historical information should be segregated from current information in a "Library" or "Archive" section of the website.
5. Issuers should review the SEC's Interpretive Release on Use of Electronic Media. Any

information that is posted on the portion of a government's website dedicated to investors should be reviewed by counsel.

6. Issuers choosing to publish their rating agency reports on their issuer-controlled website should ensure that posting is consistent with rating agency policies (i.e., permission may be required). Additionally, old reports should be removed at the time that new rating reports are published.
7. If a government chooses to post unaudited interim financial information, the posting should clearly state that the information is unaudited and the government may wish to include additional disclaimer language regarding use of unaudited information.
8. The security of an issuer's website should be evaluated to protect it from manipulation by external or unauthorized persons.
9. Documents on the website used in connection with a sale of bonds (e.g., POSs, audited financial statements and feasibility reports) should be identical to versions distributed in hard copy. In addition, information on an issuer's website intended for use in a bond sale should be clearly identified as such, and segregated from other information.
10. Issuers should consider the need to involve other departments and professionals to ensure that all necessary parties are involved in developing and deploying disclosure information on the website.
11. Issuers should consider ease of use and accessibility in designing a website for investors and be specific when referencing or addressing a specific place on the issuer's website intended for investors. Issuers should also include a contact person to answer questions related to information on the website.
12. Issuers should post their continuing disclosure filings on their disclosure website in addition to submitting the postings via EMMA as required.
13. Issuers should consider the possibility of increased exposure to liability under the securities laws when evaluating the cost/benefit of using a website for disclosure. However, in nearly all circumstances, appropriate disclaimers and procedures can adequately protect an issuer against undue regulatory risk.
14. Issuers should not use social media to communicate investor-related information that is not also included on the centralized investor information area of the issuer's website. In the absence of accurate and timely official disclosure, financial information communicated via social media could be considered of material importance to investors.
15. Posting of information related to regulatory actions (including documents related to the SEC MCDC Initiative or the IRS VCAP program) is not recommended, unless specifically required as part of a CDA or other legal obligation.

References:

- Interpretive Release on Use of Electronic Media, Securities and Exchange Commission, Release No. 34-42728, April 30, 2000.
- "Making Good Disclosure - The Role and Responsibilities of State and Local Officials under Federal Securities Laws," Robert Dean Pope, GFOA, 2000.
- "Providing Information to the Secondary Market Regarding Municipal Securities," National Association of Bond Lawyers, September 20, 2000.
- Disclosure Roles of Counsel, John McNally, Project Coordinator, ABA/National Association of Bond Lawyers, 2009.
- GFOA Best Practice: Understanding Your Continuing Disclosure Responsibilities, 2015
- GFOA Best Practice: Maintaining an Investor Relations Program, 2010
- GFOA Best Practice: Post-Issuance Policies and Procedures, 2017.
- GFOA Best Practice: Primary Market Disclosure, 2017.
- SEC Rule 15c2-12
- MSRB's Electronic Municipal Market Access (EMMA)

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Government Finance Officers Association

BEST PRACTICE

Understanding Your Continuing Disclosure Responsibilities

BACKGROUND:

Governments or governmental entities issuing bonds generally have an obligation to meet specific continuing disclosure standards set forth in continuing disclosure agreements (CDAs, also called continuing disclosure certificates or undertakings). Issuers enter into CDAs at the time of bond issuance to enable their underwriters to comply with Securities and Exchange Commission (SEC) Rule 15c2-12. This rule, which is under the Securities Exchange Act of 1934, sets forth certain obligations of (i) underwriters to receive, review and disseminate official statements prepared by issuers of most primary offerings of municipal securities, (ii) underwriters to obtain CDAs from issuers and other obligated persons to provide material event disclosures and annual financial information on a continuing basis, and (iii) broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities in the secondary market.[1]

When bonds are issued, the issuer commits (via the CDA) to provide certain annual financial information and material event notices to the public. In accordance with SEC Rule 15c2-12, those filings must be made electronically at the Electronic Municipal Market Access (EMMA) portal.

The SEC's Municipalities Continuing Disclosure Cooperation (MCDC) initiative in 2014, along with other recent federal regulatory actions, have highlighted the importance of maintaining a reliable system to adequately manage continuing disclosure.

Issuers may choose to provide periodic voluntary financial information to investors in addition to fulfilling the specific SEC Rule 15c2-12 responsibilities undertaken in their CDA. It is important to note that issuers should disseminate any financial information to the market as a whole and not give any one investor certain information that is not readily available to all investors. Issuers should also be aware that any information determined to be "communicating to the market" can be subject to regulatory scrutiny.

In addition to filing information via EMMA, a government may choose to post its annual financial information and other financial reports and information on the investor section of its web site.

RECOMMENDATION:

GFOA recommends that finance officers responsible for their government's debt management program adopt a thorough continuing disclosure policy and adhere to the following best practices. Issuers should determine how to apply best practices in the manner that is relevant and most practical for their entity. Incorporating robust disclosure practices and demonstrating a solid disclosure track record will benefit an issuer by encouraging regulatory compliance and by enhancing credibility among investors, credit rating agencies and the public, thereby resulting in

optimal bond issuance results.Issuers should consider the following elements in creating policies and practices related to required continuing disclosure responsibilities:

1. Issuers should have a clear understanding of their specific reporting responsibilities as defined in the bond's CDA. If the issuer has determined that financial information is material and must be included in its official statement, its CDA must require that the information be updated annually. Issuers should work with their bond counsel, underwriter and municipal advisor to determine the appropriate information and detail to be included in a CDA, and should be aware of the events that must be disclosed. Prior to execution, CDAs should be discussed with the issuer's bond counsel, underwriter and financial advisor to ensure a full understanding of issuer obligations.

2. Governments should develop continuing disclosure procedures that:

- identify the information that is obligated to be submitted in an annual filing;
- disclose the dates on which filings are to be made;
- list the required reporting events as stated by the SEC and your CDA;
- ensure accuracy and timeliness of reported information; and
- identify the person who is designated to be responsible for making the filings.

3. Issuer representatives responsible for filing continuing disclosure should carefully review and understand the specific requirements in the CDA for each individual bond issue. For some governments, filing the complete Comprehensive Annual Financial Report (CAFR) on EMMA may fulfill annual financial information obligations. Issuers should carefully compare information in their CAFR to information required by a CDA to ensure full compliance. If a government has agreed in the CDA to furnish information that is outside the scope of its CAFR, that information may be included as a supplement to the CAFR when filing with EMMA. Some governments – especially those with multiple types of bond issues – may choose to prepare a supplemental annual disclosure document that provides the specific information identified in a CDA (in addition to filing the CAFR).

4. As recommended in the GFOA's Certificate of Achievement for Excellence in Financial Reporting program, a government should complete its audited annual financial information within six months of the end of its fiscal year. Upon its completion, the CAFR should immediately be submitted to EMMA.

5. EMMA allows an option for governments to indicate if they make their filing of annual financial information within 120 or 150 days of the end of the year; however, governments might need a longer timeline to ensure compliance. Governments should only select the EMMA-provided timing options if those dates are consistent with the specific maximum timing commitment in the CDA. The GFOA supports use of required timing commitments within a government's CDA that are reasonable to achieve, which in many cases may be longer than 120 or 150 days. Identifying unreasonably short timelines can be very difficult to meet, and failure to adhere to such a timeframe would result in violation of the CDA.

6. Event notices should be filed for events specifically identified in accordance with SEC Rule 15c2-12:

- For bonds issued after December 1, 2010, the SEC requires issuers to file event notices within 10 business days of the event.
- For bonds issued before December 1, 2010, the rule states that governments should file event notices in a "timely manner." However, governments are encouraged to adopt a policy to submit all event notices within 10 business days of the event to prevent any confusion regarding timeliness.

7. Issuers may be expected to include language in their Official Statements for new bond issues regarding any material non-compliance with continuing disclosure requirements within the past five years. Issuers should consult carefully with bond counsel and their municipal advisor regarding

appropriate language to include in this primary disclosure, which is heavily subject to regulatory scrutiny.

Governments, in consultation with internal and external counsel, may wish to submit other financial information to EMMA (and post it on their websites) that goes beyond the minimum requirements in the CDA. Issuers who choose to disclose information above and beyond the minimum requirements in a CDA should consider the following:

1. Types of additional information to be disclosed may include annual budgets, financial plans, financial materials sent to governing bodies for council or board meetings, monthly financial summaries, investment information, and economic and revenue forecasts. Governments are encouraged to place this additional or interim financial information on the investor section of their websites, including use of a feature within EMMA that allows governments to post a link directly to their website so that investors and the public can directly access the information.

2. Issuers may want to provide additional information to investors about other debt-related agreements. Rating agencies and investors may expect these disclosures to be publicly communicated, and issuers are advised of the benefits of providing this additional voluntary disclosure. These disclosures should provide information that will enable investors to make judgments about the volatility and risk exposure of agreements that may include financial risks that should be disclosed and quantified. Examples of agreements for which voluntary disclosure is recommended include:

- Direct placements, loans, lines of credit or other credit arrangements with private lenders or commercial banks. Example of the type of information to be disclosed include an interest rate or debt service schedule, legal security pledge, legal covenants, call options and other key terms.
- Letters of credit issued in connection with variable rate debt issuance;
- Interest rate swaps entered into in connection with debt issuance;
- Investment agreements for bond proceeds, including reserve funds, particularly where such investments may be pledged or anticipated bond security; and
- Insurance sureties used to fund reserve fund requirements.

Any sensitive information (such as bank accounts and wire information) should be redacted from documents prior to posting.

3. Legal and regulatory implications of voluntary postings remain uncertain. Issuers should consult with bond counsel and their municipal advisor to determine the best strategy to support the market benefits of additional communication without harming the issuer's ability to meet regulatory expectations.

Upon implementation of a formal set of continuing disclosure policies and procedures, issuers should also take steps to ensure standards are being diligently followed. Continuing disclosure policies and practices should be periodically reviewed to ensure consistency with market and regulatory expectations.

Notes:

1. MSRB Glossary of Terms, www.msrb.org

References:

- Making Good Disclosure, Government Finance Officers Association, 2002.
- GFOA Best Practice: Using Technology for Disclosure, 2015.
- GFOA Best Practice: Maintaining an Investor Relations Program, 2010.
- GFOA Best Practice: Using the Comprehensive Annual Financial Report to Meet SEC Requirements for Periodic Disclosure, 2006.

- GFOA Best Practice: Post-Issuance Policies and Procedures, 2017.
- GFOA Best Practice: Primary Market Disclosure, 2017.
- GFOA Alert: The SEC MCDC Initiative and Issuers, 2014.
- Disclosure Roles of Counsel, John McNally, Project Coordinator, ABA/National Association of Bond Lawyers, 2009.
- SEC Rule 15c2-12
- Electronic Municipal Market Access (EMMA)

Government Finance Officers Association

BEST PRACTICE

Maintaining an Investor Relations Program

BACKGROUND:

Investors are a primary source of capital for state and local governments. When a governmental entity sells debt, it enters into a long-term contract to make timely debt service payments to investors. Other stakeholders, such as bond insurers, liquidity providers, rating analysts, trustees, credit enhancers, counterparties, and constituents are interested in obtaining financial and operation information on issuers. An effective investor relations program that responds to the informational needs of these diverse groups **may** lower borrowing costs for issuers.

RECOMMENDATION:

GFOA recommends that governmental bond issuers consider developing an investor relations program. The centerpiece of such a program is a commitment to provide full and comprehensive disclosure of annual financial, operating, and other significant information in a timely manner consistent with federal, state and local laws. Issuers may consider and are encouraged to provide additional information to investors beyond that provided for in their contractual commitments. An investor relations program should address the following:

1. Identify the individual(s) who is (are) responsible for speaking on behalf of the issuer. Establish steps to ensure that all external communication regarding disclosure is approved by this (these) person(s).

2. After giving consideration to the size and organizational structure of the entity, consider creating a Disclosure Board or other appropriate group, to establish the events to be disclosed and periodicity of disclosure items. Positions on the Disclosure Board may include: the debt manager, the chief financial officer, a representative of the legislative body, an administrative officer, the financial advisor, and bond counsel or issuers counsel.

3. The Disclosure Board, or other appropriate group, should establish policies and procedures for the Investor Relations Program. Policies and procedures should be simple and clear, and should address:

a) Identification and selection of information, both positive and negative, to be made available to investors, including material events, changes in financial or operating position, and changes in government policies. Documents that could be a source of such information include:

- Annual budgets, financial plans or comprehensive annual financial reports,
- Interim financial information that is sent to governing bodies for council or board meetings, and
- Ordinances or resolutions adopted by a governing body.

b) Identification of ways to stay abreast of issues that are likely to be of concern to investors, such as issuer policies and practices pertaining to investments, fund balance, and accounting practices.

c) Identification and maintenance of a database of investors and analysts who review the purchase of the issuers debt instruments.

d) Use of CUSIP (Committee on Uniform Securities Identification Procedures) numbers.

e) Identification of means of disseminating information. Consideration should be given to: the Electronic Municipal Market Access system (EMMA_, e-mail, websites, postal distribution, and investor meetings.

f) Format of the document (e.g., .html or .pdf if electronically disseminated).

g) Timing of a release of information with any sale of debt instruments, if necessary.

h) Responding to investor questions. Consideration should be given to means of communication to all investors when a single investor poses a question.

i) Ensuring the majority of investors have access to the information.

j) Ensuring that preliminary official statements are received one week in advance of a bond sale.

k) Maintaining a good relationship with the rating agencies and fund analysts including distribution of disclosure information and keeping them informed of any changes that could affect credit quality and actions to address financial problems.

l) Ensuring that financial statements or other information needed for disclosure purposes are completed on a consistent schedule from year-to-year and prior to the date established in any contractual commitments.

m) Engaging in marketing activities to alert investors of a pending bond sale, especially if the debt instruments are sold competitively. Such activities may include preparation of special reports for investors, the scheduling of investor meetings, conference calls, and webcasting of issuer conference calls and on-site visits.

4. Consideration should be given to the fact that any record created as a result of the Investor Relations Program may be subject to internal policies and/or federal, state and local laws concerning document retention and freedom of information.

The municipal marketplace is changing, and the need to provide additional information with greater frequency is significant. Issuers should maintain an awareness of changes in current practice in the area of investor relations. Investor Relations Programs that go beyond the legally mandated requirements of Securities and Exchange Commission (SEC) Rule 15c2-12 promote the efficient sale of debt instruments in both the primary and secondary markets and improve the reception of debt offerings. Expansive disclosure practices are encouraged, especially the availability of interim financial information between your annual filings.

References:

- *Disclosure Handbook for Municipal Securities*, National Federation of Municipal Analysts, 1992.
- Securities and Exchange Commission Enforcement Actions in the Municipal Securities Markets, *Government Finance Review*, August 1996.
- *Making Good Disclosure,* Robert Dean Pope, GFOA, 2001.
- GFOA Best Practice, Using a Web Site for Disclosure, GFOA, 2002.
- GFOA Best Practice, Web Site Presentation of Official Financial Documents, 2009.
- GFOA Best Practice, Understanding Your Continuing Disclosure Responsibilities, 2010.

Government Finance Officers Association

BEST PRACTICE

Primary Market Disclosure

BACKGROUND:

Each government issuing securities in the public debt markets is responsible for providing prospective investors with information that reasonable investors would consider to be important in making an investment decision. This information includes relevant financial and operating information as well as legal and tax considerations. In preparing offering documents for new securities, issuers are expected to describe the key terms of the securities and to provide information regarding the issuer's ability to repay the securities on a timely basis. This Best Practice addresses disclosure documents prepared by municipal issuers for prospective investors when new securities are issued in the public debt markets. The issuance or sale of new securities is referred to as the primary market.

Municipal bonds are largely exempt from federal requirements for securities, but are required to comply with the antifraud provisions of the Securities Act of 1933 and Rule 10b-5 of the Securities Act of 1934. Primary market disclosure practices for municipal securities have developed as a result of these antifraud provisions, federal regulation of broker-dealers through the Securities and Exchange Commission (SEC) Rule 15(c)2-12, and other regulations of market participants by the Municipal Securities Rulemaking Board (MSRB). Disclosure guidelines published by various industry groups have also played a significant role in shaping market practice.

Federal antifraud laws prohibit making material misstatements, or omissions of material facts if those facts are necessary to avoid a misleading statement. In some cases, issuers may be held responsible only if they had knowledge of committing fraud. In other cases, issuers may be held responsible for violations through negligence. In either case, issuers who fail to comply with disclosure requirements may be subject to regulatory actions and/or monetary fines. Regulatory expectations are increasing and issuers should be very mindful of the quality and accuracy of information included in primary market offering documents.

RECOMMENDATION:

GFOA recommends issuers establish clear policies and procedures for compiling information before issuing debt. Issuers are to carefully consider information that may be material to investors when compiling primary market information. The preliminary official statement should contain specific information about the securities, including a detailed description of the purpose of the issue, and legal opinions regarding the issuer's authority and the tax status of the securities. In addition, the offering document ("Preliminary Official Statement" or "POS") should provide the most recent financial information that may be useful to prospective investors. GFOA recommends that issuers consult counsel to determine if this information should be updated following the sale for the final Official Statement. Specific GFOA recommendations for primary market disclosure are detailed below.

Identifying, Compiling and Verifying the Information that is Material for Investors

Good and consistent disclosure is the issuer's responsibility. Issuers should develop a clear written statement of the systematic process in which primary market disclosure is drafted, reviewed and approved. The statement should specify who coordinates the disclosure process and name internal and external participants. Implementation will vary by the size of the issuer, the frequency with which the issuer accesses the market and by type of credit.

- Determine who has responsibility for drafting the disclosure and managing the preparation and review process. Issuers should have a clear understanding of the roles of various parties on the financing team, including bond counsel, disclosure counsel, municipal advisors or underwriter's counsel. While each of these parties may provide input into the drafting process, the issuer has the ultimate responsibility for its accuracy and content. Discuss the different roles of bond and disclosure with counsel(s).

- Identify an internal working group involving subject matter experts on budget, pension, operations, legal etc. to actively review the disclosure and consider whether it is accurate and complete

- Consult offering documents of peer issuers for an overview of topics covered.

- Include management (people in positions of authority) in the preparation and review process whenever possible to ensure a big-picture perspective. Identify issuer representatives to certify as to the material accuracy of data included in the offering documents and the completeness of the offering documents.

- Provide training to participants in the internal working group regarding market expectations and regulatory guidelines.

- Consider whether the information provides the investor with a coherent and comprehensive understanding of the issuer and the credit. More is not necessarily better. Be clear and concise.

- Inform members of the governing body of the expected issuance and provide them with an opportunity to review primary market offering documents.

- Determine how external parties such as bond counsel, disclosure counsel, municipal advisors, underwriters or underwriters counsel participate in the diligence review. Understand the regulatory requirements of each party. For example, in a negotiated sale, underwriters will likely require a due diligence call or meeting.

Preparing the Preliminary Official Statement

The Preliminary Official Statement (POS) is the published offering document that contains information regarding the securities and the issuer that would be considered to be important for investors. It is electronically distributed prior to the sale and pricing of the securities for review and consideration by potential underwriters and investors. The specific information included in a POS as well as the order of that information within the document will vary widely based on issuer historical practices, regional norms and industry expectations.

Front Portion

- Cover – A brief summary noting the issuer, the purpose of the issue, security terms, the estimated par amount, principal and interest payment dates, sources of payment, ratings (if available), and the date of the document. In negotiated sales, the names of managing underwriters are shown. The cover is typically followed by contact information for the issuer,

advisors and counsel, and a table of contents for the document.

- Description of securities being offered – This section more fully describes the authority of the issuer, the purpose for which the securities are being offered, the security pledge, the principal amount, interest payment terms as well as all other structural features of the securities such as redemption features. It also identifies the fiscal agent or trustee. In the case of a refunding, this section identifies which securities may be refunded.

Authority – Describe pertinent provisions of the state constitution, statute, indentures or resolutions that authorize and/or limit the issuance of the securities.

Purpose – Describe the purposes for which the bond proceeds are to be used. Include a table showing the estimated sources and uses. If additional funds are needed to accomplish the stated purposes, indicate the projected sources of these funds. If the bonds are being issued to refund outstanding bonds, a listing of the proposed for refunding, including CUSIP numbers, redemption dates and prices should be included, along with a description of the types of securities that will fund the escrow account.

Security Pledge – Provide a clear description of the security pledge and detailed information regarding the sources of payment. This section also notes if the obligations are secured by physical assets. Describe the provisions permitting or restricting the issuance of additional securities or the incurrence of additional parity debt.

For revenue bonds– Include additional information such as the flow of funds, rate covenants, the additional bonds test, and reserves (if applicable) and other provisions of the authorizing document. Briefly describe the findings of any engineering or financial feasibility reports or studies on the construction or operation of a funded facility (full reports may be included as an appendix, if desired).

For lease and installment financing contracts –Describe whether payments are subject to appropriation, and the legal provisions and covenants regarding budgeting, abatement and appropriations.

For variable rate debt – Include information regarding the terms of any liquidity facility or line of credit as well as terms related to termination events or credit remedies, if applicable.

For conduit financings, asset-backed, or assessment-backed securities– List significant risks faced by bondholders such as construction risks, legal issued, damage to property or risks related to foreclosure procedures. It is important that this section be comprehensive.

- Future Issuance Plans – Current information regarding the issuer's plans for future sales of securities secured by the same credit.

- Credit Ratings – A statement regarding any rating(s) that have been requested and assigned.

- Credit Enhancements – Describes the terms of any guarantee, insurance, surety or credit facility pertaining to the payment of principal or interest.

- Continuing Disclosure Agreement – The issuer's commitment to periodically update the financial information in the official statement to investors over the life of the bonds, the timeline for the distribution of these filings and commitments to make filings on specified material events. Identify any material failure to comply with prior undertakings during the past five years.

- Legal and Tax Matters – A statement as to whether any pending litigation or regulatory proceedings challenge the validity or security for the bonds, the authority with which they are

issued, or, if resolved adversely, could affect the issuer's ability to pay debt service on the bonds. It also addresses the legal opinion and the tax status of the bonds under federal and state law.

- Municipal Advisors - The identification of municipal advisors for the issuer and certain information regarding their compensation.

Issuer's Financial Information[i]

- Incorporation by reference – Some larger or frequent issuers may be able to "incorporate by reference" some financial information that is provided in the issuer's continuing disclosure annual report. In doing so, issuers must still complete due diligence to ensure that such materials are accurate and provide updates as needed. Incorporation by reference may be accomplished by including a web link[ii]. The desirability of incorporating financial information by reference, and the manner of doing so, should be discussed with counsel as well as other parties involved in the financing, especially underwriters and municipal advisors.

- Overview of government financial framework – Provide background material regarding the issuer indicating the issuer's ability to impose and collect taxes. A brief description of the issuer's location and size, the form of government, the budget and appropriation process, fiscal monitoring and controls, and current accounting practices. This section often identifies the principal officials of the issuer and the number of government employees (including information about their employment benefits and collective bargaining groups).

- Revenues, Expenditures and Reserves – Present financial statements of revenues and expenditures for the most recent five-year period, generally in accordance with generally accepted accounting principles as established by GASB. Provide similar historical data on unrestricted balances, reserves or other sources of liquidity. Some issuers provide cash flow forecasts. Include information on budgets. Describe how tax revenues are levied and collected and identify factors likely to affect the issuer's tax base.

- If the securities being offered are payable from particular revenues of the issuer, such as a particular tax or assessment or revenues of a particular enterprise, provide more detailed information including historical information on trends. Note what information is audited and what is unaudited. Prioritize audited data over unaudited data. If much time has elapsed since the prior year, include a narrative of the current year to date.

- If the securities being offered are payable from property taxes, provide historical information on the assessed valuation of taxable real property, including rates of collection and delinquencies, and segregating data for industrial, commercial, utility and residential properties.

- Indebtedness and other obligations –Present the debt structure of the issuer and explain the authority to incur debt, limitations on debt and debt trends. Provide details on the current debt portfolio to show principal and interest payments due. Include other obligations such as bank loans, direct purchases or private placements and note variable rate debt, bond anticipation notes and deep discount debt. Also describe key terms of any outstanding derivative contracts or other financial obligations subject to acceleration or rating triggers.

- Investments – Describe the investment portfolio, trends in investment balances and a summary of the investment policy.

- Risk Management – Describe resources available to the issuer such as insurance policies or reserve funds to cover general liability claims or property damage.

- Retirement/Pensions/OPEB –Describe the issuer's retirement plans and funding policies, as

well as the issuer's required pension contributions. Note the number of eligible employees. Summarize the most recent actuarial valuation or study of the plan. Describe the plan's funded status and summarize the investment policy for plan assets. Include any key legislation or litigation that might affect the issuer's pension obligations. Information on any OPEB should also be included. If pension or OPEB information is particularly complex and lengthy, the POS can include a summary, with full information included as an appendix.

- Demographic and Economic Information – A brief summary of key economic indicators for the issuer as available from regional, state or national sources. This may include data such as population trends, employment by sector or number of employees at key local employers, unemployment rates retail sales and building permits.

- Financial Projections – For some issuers or types of bonds, financial projections may be included. This could be especially important for credits that are payable solely from a specific, dedicated revenue stream. If projections are included, list all assumptions and factors that could cause actual results to differ from the projections.

- Utility or enterprise issuers – Include a description of the facilities, service area, customers, rates, capital plans, permits, and the capacity of the system.

- Attach the issuer's most recent audited financial statements.

Proposed Form of Legal Opinions

Attach the proposed form of the opinions prepared by counsel regarding the authority, validity and tax status of the securities.

Distributing Disclosure Documents

Wide distribution of an issuer's POS is important for a successful bond sale. Several electronic distribution systems are available. Larger and more frequent issuers may consider establishing an email distribution list for sharing disclosure documents or to provide an alert on the availability of such documents. For issuers who maintain an official website, GFOA recommends posting disclosure documents when available and should consult legal counsel regarding appropriate disclaimer language for prospective investors.

For some sales, information in offering documents is summarized or displayed on an issuer's website or in "roadshow" materials that can be made available to prospective investors, with appropriate disclaimers. Consult with counsel for guidance on these alternative formats.

Converting the POS to OS

The final disclosure document or the Official Statement (OS) updates the POS to include the final terms of the bonds after the sale, i.e. the final principal amounts, coupon rates, yields, prices and CUSIPs for each maturity. If securities have been sold competitively, it also identifies the underwriter(s) who purchased the securities.

Certain financial or legal developments following the distribution of the POS but prior to pricing or prior to posting the final OS may require the distribution of a revised or "stickered" document to prospective investors. In this event, consult with counsel to determine if the development or the new information would be considered to be material to an investor's consideration of the security. Issuers are also responsible for communicating material developments to the market for a 25-day period following the closing date.

As illustrated in this best practice, primary market disclosure is expected to satisfy regulatory requirements by identifying information that is material for investors. Good disclosure communicates

this information effectively and lowers borrowing costs by promoting good investor relations. In addition, issuers with deficient disclosure may be subject to regulatory actions and/or monetary fines. The information included in this best practice is intended to provide comprehensive suggestions for primary market disclosure.

Notes:

[i] ***Issuer's Financial Information*** may be included in front portion or in an appendix

[ii] The uniform resource locator (or "URL") where the investor may locate the information should be posted on the issuer's website. Alternatively, that URL may be an active hyperlink. Use of an active hyperlink may have the legal effect of including the information in the issuer's offering document. Care should also be taken to maintain the functionality of the hyperlink.

References:

GFOA, *Disclosure Guidelines for Offerings of Securities by State and Local Governments*, 1991

National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for:*

State Government General Obligation and Appropriation Debt, September 2015

Charter School Debt Offerings, March 2017

Variable Rate and Short-Term Securities, August 2012

National Association of Bond Lawyers, *Consideration in Preparing Disclosure in Official Statements Regarding an Issuer's Pension Funding Obligations*, 2012

SEC *Report on the Municipal Securities Market*, 2012

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June 12, 2018

Brent Fields, Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-0609

Re: File Number 265-28; Recommendations of Market Structure Subcommittee of IAC, Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds

Dear Mr. Fields,

As a member organization representing over 19,000 municipal securities issuers across the United States, the Government Finance Officers Association ("GFOA") read with great interest the Recommendations from the Market Structure Subcommittee to the SEC Investor Advisory Committee on June 5, 2018 "Enhancements to Protect Retail Investors in Municipal and Corporate Bonds." We understand these recommendations will be discussed at the next meeting of the SEC Investor Advocate on June 14, 2018 in Atlanta, GA. On behalf of our members, the GFOA is very interested in rulemaking that directly affects our membership from state and local governments. We appreciate the Commission's consideration of our comments below.

The GFOA has a long history of encouraging transparency in the municipal marketplace and consistently urges our members to timely and fully disclose material events to investors[1]. Accordingly, the GFOA supports efforts to ensure that material information related to municipal securities credits are available to investors. Many of the Recommendations of the Market Structure Subcommittee to the Investor Advisory Committee reflect our mutual interests in quality, timely and meaningful disclosure and we appreciate any opportunity there may be for GFOA to further discuss with the Advisory Committee and the SEC the Recommendations as they develop.

The Recommendations first encourage the SEC to move forward toward passage of its proposed amendments to Rule 15c2-12 after taking into consideration stakeholder comments. The Recommendations note of the proposed amendments, "the triggers for current disclosure are not sufficiently clear and that this will lead to undue burden on market participants and over-disclosure." We agree that the SEC should be aware of the considerable problems associated with adopting multiple changes to Rule 15c2-12 as proposed. The proposed changes would be burdensome to issuers, add

[1] See GFOA Best Practices *Understanding Your Continuing Disclosure Responsibilities, Primary Market Disclosure, Post-Issuance Policies and Procedures. Using Technology for Disclosure, Maintaining an Investor Relations Program, Using the Comprehensive Annual Financial Report for Meet SEC Requirements for Periodic Disclosure, and others at* www.gfoa.org/best-practices

complication for investors and the general public, and ultimately increase costs to taxpayers and investors. The required determination of "materiality" coupled with the vast definition proposed for "financial obligation," uncertainty about the defined scope of "leases", "guarantees" and "derivative instruments" and lack of definition with regard to "financial difficulties" would create significant administrative and costly burdens to state and local governments. We have requested clarification and are grateful to see the Recommendations echo our concerns[2].

Second, the Recommendations urge an update to the 1994 interpretive guidance with respect to Rule 15c2-12. The GFOA provided numerous comments at the time the 1994 guidance was drafted and adopted and would like to again work with the SEC to focus on areas where clarity may be needed and helpful to issuers. Understanding today's market and the changes that all market participants, including issuers, have gone through over the several decades, provide cause for a dialogue between the SEC and our members, as the SEC looks to update the interpretive guidance.

Finally, the Recommendations request an enhancement to EMMA. The GFOA has supported the MSRB's efforts to develop and improve the functionality of EMMA. This has allowed issuers to use a streamlined approach to submitting disclosure materials (rather than the previous process of submitting physical documents to numerous NRMSIRs). It also has provided a way for investors and underwriters to access a more straight-forward presentation of financial information. The Recommendations suggest a "flag" notifying the viewer that an issuer is out of compliance with its continuing disclosure requirements as stated in the issuer's continuing disclosure agreement. We recognize that financial information is crucial to the decision making of most investors, and we believe that if the SEC were to move forward with this recommendation, it would also need to conduct considerable dialogue with issuers and other market participants to determine the parameters in which such a system should be implemented and monitored to avoid the possibility of inadvertently harming a municipal credit due to error or other mistake.

As the SEC reviews the Recommendations to the Investor Advisory Committee and looks at ways to effectively improve disclosure practices in the municipal bond market, GFOA is happy to bring to the table market experts and frequent and infrequent issuers alike to discuss these issues with you.

Sincerely,

Emily S. Brock

Emily S. Brock
Director, Federal Liaison Center

Cc: Rick A. Fleming, Investor Advocate
Rebecca Olsen, Acting Director, Office of Municipal Securities

[2] See GFOA letter submitted in response to File Number S7-01-17 in response to SEC Proposal to Amend Rule 15c2-12. https://www.sec.gov/comments/s7-01-17/s70117-1752921-151890.pdf

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May 15, 2017

Brent Fields, Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-0609

Re: File Number S7–01–17
Proposed Amendments to Exchange Act Rule 15c2-12

Dear Mr. Fields:

The Government Finance Officers Association ("GFOA") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposal to amend Rule 15c2-12. The GFOA represents over 19,000 members across the United States, many of whom issue municipal securities. On behalf of our members, the GFOA is very interested in rulemaking that is done in this sector. Members of GFOA's Committee on Governmental Debt Management, a geographically and organizationally diverse group of 25 municipal securities issuers, were consulted in preparing this comment letter.

The GFOA has a long history of encouraging transparency in the municipal marketplace and urging our members to disclose material events to investors. Accordingly, the GFOA supports efforts to ensure that municipal securities information is available to investors. However, the SEC should be aware of the considerable problems associated with adopting multiple changes to Rule 15c2-12 as proposed. The proposed changes would be burdensome to issuers, add complication for investors and the general public, and ultimately increase costs to taxpayers and investors. As we identify below, the required determination of "materiality" coupled with the vast definition proposed for "financial obligation," uncertainty about the defined scope of "leases" "guarantees" and "derivative instruments" and lack of definition with regard to "financial difficulties" would create significant administrative and costly burdens to state and local governments.

This proposal as drafted will not practically accomplish the goal of providing more relevant information into the hands of investors. If the goal of this amendment is to provide *quality* information to investors (as opposed to sheer volume of information)

then we believe the focus should be on improving investor access to information through improvements to EMMA and promoting existing resources on state and local governments' publicly available web sites, rather than having the SEC impose new unfunded mandates on state and local governments. If the SEC does intend to move forward with the proposal, then it must more narrowly tailor the new material event notices to focus on bank loans and direct placements that are held in parity with municipal securities debt obligations.

Current Best Practices in Disclosure

The GFOA strongly urges the SEC to bear in mind the fundamental distinction in form and function between corporate entities and public entities when assessing the scope of the proposed regulations. State and local governments already disclose all of the information proposed in this amendment to 15c2-12 in annual disclosure filings and comprehensive annual financial reports (CAFRs). Many state and local governments also voluntarily disclose this information on their investor information websites and in the EMMA system. GFOA would encourage having the SEC and MSRB promote investor education to locate different types of information within a government's annual financial filing and official statements.

GFOA also recommends that the SEC explore other available tools that would strongly urge compliance through voluntary disclosure mechanisms and encouraging enhanced disclosure in continuing disclosure agreements. These voluntary efforts could accomplish the goal of providing more relevant information about bank loans and private placements into the hands of investors.

Voluntary disclosure has long been a feature of GFOA's published Best Practices. GFOA's "Understanding Your Continuing Disclosure Responsibilities Best Practice" (attached) is one of many documents on recommended disclosure Best Practices that the GFOA has published for its members and the issuer community. This best practice encourages members to look beyond the requirements of Rule 15c2-12 and develop and coordinate a program to disseminate information that is valuable to investors and the public. It also recommends issuers make voluntary disclosure filings or posting on government's web site of ongoing and already prepared budget and financial information.

GFOA's "Understanding Bank Loans Best Practice" is another such document published by GFOA for its members and the issuer community. This Best Practice encourages issuers to voluntary disclose bank loans and carefully consider information what may be material to investors. GFOA's Advisory "Use of Debt Related Derivatives Products" recommends issuers develop guidelines for disclosure of swap information for primary and secondary market purposes, and GFOA's Best Practice "Using Technology for

Disclosure" recommends issuers publish on their web site and submit through EMMA information about their financial condition and other relevant information.

GFOA acknowledges that some information can more easily be provided to the marketplace (e.g., debt obligations such as bank loans and private placements) and we have worked collaboratively with market participants – including the MSRB – to develop and communicate strategies to improve such disclosures. However, other information suggested in the proposed requirements (e.g. leases, derivatives) includes transactions that may occur multiple times a year through the normal operating activities of state and local governments and are not on par with debt obligations. Such a broad brush for financial events to be reported may not be as beneficial to the marketplace and instead could create greater confusion and cost to investors, especially retail investors.

Again, while GFOA and other state and local governments promote transparency in the market to ensure that investors have appropriate material information about municipal securities, this proposal is not practical. The SEC must provide meaningful guidance for issuers and their officials to determine *materiality* for the obligations addressed in this proposal, narrow the definition of *financial obligation* specifically to the activity that is under review which would require significant clarification on what is intended by the terms *lease, guarantee, and derivative instruments* and define the term *financial difficulties*.

Incurrence of a "Financial Obligation"

Establishing materiality is important in order to ensure that relevant information is passed along to investors. That decision is best made by an issuer on a case by case basis, along with advice of counsel. While the proposed wording includes an "if material" qualification, the proposed rule does not establish key parameters – in rulemaking or guidance – for helping issuers determine a materiality baseline. Most state and local governments are naturally risk averse and, in the absence of clear guidelines, will be predisposed to use an extremely low or even zero-dollar threshold for materiality. The result will be a significant amount time invested by the issuer to prepare and file material events notices that may not be useful to the investor, and may in fact increase confusion. The issue of materiality for issuers in this regard will also be further complicated by needing to consider issues of impact to a single security or aggregate securities and the nature of counter-party risk related to derivative debt instruments or multi-agency agreements.

GFOA supports voluntary disclosure of bank loans, private placements and debt-related derivative instruments. That said, we believe that a number of the proposed additional "financial obligations" covered under Rule 15c2-12 would be information that is both superfluous to investors and costly for issuers to present outside of financial statements. "Leases" for example, are transactions that take place many times per year

in many jurisdictions and are commonly related to the ongoing operations of a government. It remains unclear whether the language refers to capital or operating leases (or both). GFOA opposes the inclusion of operating obligations in this proposal. Similarly, "guarantees" could benefit from having greater clarity about what is included under the proposed rules. The concept of derivatives as obligations also needs clarification. If an issuer determines their derivative contracts are material to investors, then only specific information of interest to investors – and not all aspects of these voluminous contracts – should be disclosed.

Based on the concerns discussed we would recommend that the additional event notification be limited to material debt obligations held in parity to investor-held debt. If the Commission insists on including other types of financial obligations for event notifications, definitions should be tightened and clear unambiguous materiality definitions should be developed that will allow quick determination of required events. In addition, the actual capacity of the EMMA system to realistically take on the additional volume of information should be critically assessed. Failure to appropriately define disclosure expectations will result in wasted public dollars, unnecessary regulatory risk and monitoring efforts, a less transparent volume of information, and damage to the municipal market for both issuers and investors.

Activities that Reflect "Financial Difficulties"

As stated above, the lack of clarity and guidance in several of the terms provided in the proposed amendments are of great concern to state and local finance officers. In addition to unclear guidance on materiality and terms provided under the scope of the proposed amendments, the term "financial difficulties" is left undefined. Jurisdictions would have to engage counsel and incur significant costs to determine what within this area would be material. Compliance of this proposed amendment will be nearly impossible issuers of all sizes without any guidance from the SEC.

Suggested Revisions

We strongly suggest in the alternative that the SEC consider modifying the proposed language in at least the following four ways:

1. Provide meaningful guidance for issuers and their officials to determine *materiality* for the obligations addressed in this proposal
2. Define the term *financial difficulties*
3. Define the terms *lease, guarantee, and derivative instruments*
4. Revise the definition provided for the term *financial obligation* to:

*(f) * * **

(11) The term financial obligation means OBLIGATIONS OF THE ISSUER ON A PARITY WITH BONDS. THESE OBLIGATIONS MAY BE A (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, ~~or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding~~. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

Effective Date

The SEC must acknowledge the totality of the new material events will take time for issuers and bond counsel to incorporate into continuing disclosure agreements, and debt management practices. For issuers who will bear large upfront costs, budgetary resources may need to be identified in order to comply. Therefore, the implementation period should be much greater than three months.

Estimated Time and Costs Associated with Rule Implementation

The SEC has significantly underestimated the time needed by issuers to prepare documents and comply with the requirements. The proposal's uncertainties and ambiguities described in this letter are likely to increase costs to issuers exponentially. This is true for both small governments that do not have staff dedicated solely to debt management issues, and for large governments that are in the market frequently and have extensive disclosure requirements. Furthermore, if the proposed changes are finalized, the additional requirements of Rule 15c2-12 will require governments to engage bond counsel and consultants more frequently to assist with due diligence and prepare documents.

A 2017 survey of 174 GFOA members primarily responsible for debt disclosure in jurisdictions ranging from $14 million - $15 billion general fund budget revealed significant time and cost burdens. The average size of staff responsible for debt issuance and disclosure is 1.7 FTE. Exactly half of the respondents have only one person with this responsibility, among other responsibilities. Respondents estimated that the average amount of internal staff time committed to ensuring compliance to the proposed amendments would be 7.3 hours per material event and 7.8 per occurrence, modification of terms or other similar event. When asked if they would need to consult in-house or outside counsel to determine materiality, 97% responded that outside counsel would be required. GFOA also strongly suggests that the SEC thoroughly review the comments submitted by the National Association of Bond Lawyers (NABL). Their comments, especially on the technical details pertaining to changes in Rule 15c2-12 submitted to OMB referencing the Paperwork Reduction Act, are comprehensive and are of great value to this discussion.

Conclusion

While GFOA promotes transparency in the market and actively supports activities to ensure that investors have appropriate information about municipal securities, we have significant concerns with the SEC's proposal. The SEC should provide meaningful guidance for issuers and their officials to determine *materiality* for the obligations addressed in this proposal, narrow the definition of *financial obligation* specifically to obligations that are on a parity with bonds and define the terms *financial difficulties, guarantees* and *leases*.

We also strongly suggest that the SEC weigh the cost of compliance to issuers – costs ultimately borne by residents of the issuing state or local jurisdiction – with the benefit to investors.

In addition to the changes to Rule 15c2-12 that the Commission is considering, we would respectfully request that the Commission also look to change the requirement that issuers file a material event notice for rating changes and instead require the rating agencies to provide rating information for all municipal securities directly to EMMA (Electronic Municipal Market Access system). It is important to note that all of the major rating agencies already provide a feed of their ratings to EMMA on a daily basis. Rating information is crucial to the decision making of most investors, and the fastest way to get that information to investors is to use the information that is sent from the agencies to EMMA directly.

As the SEC reviews comments on the proposed rule, and looks at ways to effectively improve disclosure practices in the municipal bond market, we welcome the opportunity to discuss these issues with you.

Sincerely,

Emily S. Brock

Emily S. Brock
Director, Federal Liaison Center

GFOA's mission is to promote excellence in state and local government financial management.

Government Finance Officers Association (GFOA), founded in 1906, represents public finance officials throughout the United States and Canada. The association's nearly 20,000 members are federal, state/provincial, and local finance officials who are deeply involved in planning, financing, and implementing thousands of governmental operations in each of their jurisdictions. GFOA has accepted the leadership challenge of public finance. To meet the many needs of its members, the organization provides best practice guidance, consulting, networking opportunities, publications including books, e-books, and periodicals, recognition programs, research, and training opportunities for those in the profession.

MEMBERSHIP PROFILE

Membership as of 3/31/2018	19,406
Active Finance Professionals	100%
Members Who Hold CPA	59%
Members Who Are CFO	44%

Government Finance Officers Association

The mission of GFOA's Federal Liaison Center is to inform our members about federal legislation, regulations, judicial actions, and policies that affect public finance functions and to represent member interests in Washington, D.C. Staff collects, analyzes, and disseminates information to GFOA members and provides policymakers with information on GFOA positions.

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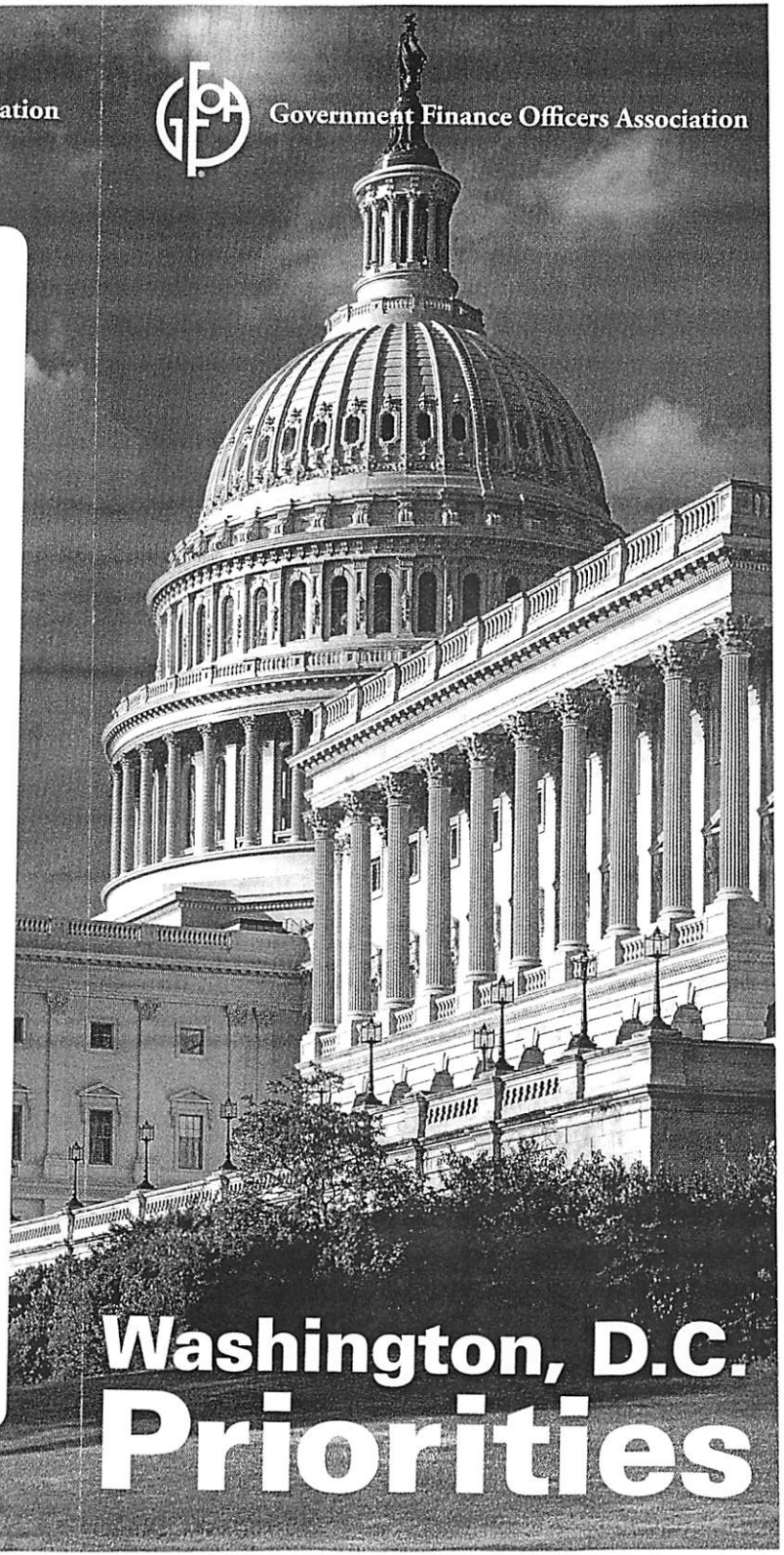
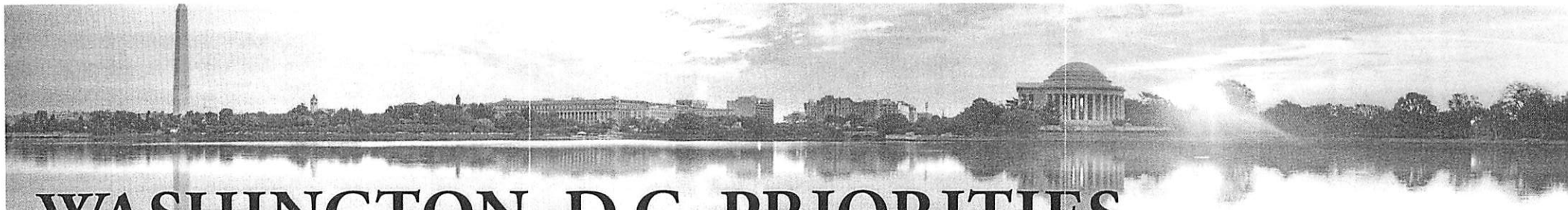
Government Finance Officers Association



Washington, D.C. Priorities



WASHINGTON, D.C. PRIORITIES

GFOA's D.C. activities include participating in many working groups with other state and local organizations on issues of importance to our members including: public financing, tax, pension and benefits, and banking issues. We maintain close working relationships with many regulatory agencies including the Securities and Exchange Commission (SEC), the Internal Revenue Service (IRS), the Municipal Securities Rulemaking Board (MSRB), and have constant dialogue with other issuer organizations.

Our major priorities are outlined below.

INFRASTRUCTURE

Preserve Access to Flexible and Reliable Financing

Muni Bonds Issued 2007-2017	**$3.6 T**
Volume of Muni Bond Issues in 2017	**$392 B**
10-year Savings to S/L from the Exemption	**$714 B**
S/L Share of Infrastructure Financing	**75%**

For more than 110 years, state and local governments across the United States have consistently depended on the preservation of the municipal bond tax exemption as a fundamental component of our nation's intergovernmental partnership. The U.S. bond market helps state and local governments, authorities, and non-profits maximize their contributions to our national economy by developing and maintaining quality infrastructure. It is the bedrock by which state and local governments, authorities, and nonprofits of all sizes can cost effectively access the capital markets and, in turn, provide essential infrastructure for their citizens.

REMOTE SALES TAX

Grant States and Local the Ability to Enforce Existing Tax Laws

Federal inaction on legislation to grant states and localities the ability to enforce existing sales tax laws on remote sales results in billions of dollars lost each year. Current estimates show states and localities fail to collect more than $26 billion annually on remote sales, a number that is only expected to grow as e-commerce grows. Passing legislation like the Marketplace Fairness Act (MFA) or the Remote Transactions Parity Act (RTPA) would appropriately bring federal law into the digital age and allow states and localities to collect taxes that fund vital public services. Enacting the legislation would also help level the playing field for brick and mortar retailers who find themselves at a competitive disadvantage to remote sellers.

PUBLIC EMPLOYEE PENSIONS AND HEALTHCARE

Maintain Flexibility to Provide Benefits

Retirement security and healthcare coverage are among the benefits public employers offer to remain competitive in the job market. State and local governments have taken, and continue to take, steps to enhance retirement security and optimize the benefits offered to employees in light of the fiscal challenges post-great recession. Further, state and local employee retirement and healthcare plans are established and regulated by state laws and, in many cases, also subject to local governing policies and ordinances. Therefore, any federal proposals that impact public pensions or employer-provided healthcare should avoid undermining state and local governments' ability to govern and finance those benefits.