



National Association of Government Defined Contribution  
Administrators, Inc.

February 16, 2011

Ms. Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NW  
Washington, DC 20549-1090

Re.: SEC File Number S7-45-10  
Release No. 34-63576

Dear Ms. Murphy:

I write on behalf of the National Association of Government Defined Contribution Administrators which represents administrators of public employer sponsored deferred compensation and defined contribution plans. NAGDCA represents plans in most of the 50 states and over 200 local governments. On behalf of these plans and their participants I respectfully urge the SEC to amend the proposed rule regarding the Registration of Municipal Advisors, so as to exempt from registration all individuals elected or appointed to a governing board of a public employer sponsored defined contribution plan, whether or not such appointed or elected member is an employee of the sponsoring entity.

As an example, deferred compensation plans authorized by Section 457(b) of the Internal Revenue Code are public employer sponsored supplemental retirement plans and are typically overseen by a board or committee. The composition of the board or committee is generally specified by state law, local ordinances or resolutions enacted by the government entity. It is very common that the board or committee will include public members who serve on a volunteer basis. The composition of the board or committee helps to provide representation of interested parties (retirees, employee representative organizations) and professional and independent perspectives (lawyers, financial professionals, management specialists). These individuals perform a valuable public service and provide a broad, independent perspective to policy decisions and administrative guidelines.

The proposed regulations explicitly exempt employees of the municipal entity and elected members of the governing body of the municipal entity to the extent that person is acting within his or her role as an elected official from the proposed registration requirement. However, the proposed regulations do not exempt non-employees (public members) of the municipal entity from the definition of a Municipal Advisor. In response to an earlier comment on this issue that Commission stated that non-employee

or elected members “are not directly accountable for their performance to the citizens of the municipality.” We believe that this is not a fair characterization of the roles and responsibilities of each member of a deferred compensation board or committee and is a misunderstanding of their relationship to the appointing authority.

Each member of a public employer sponsored deferred compensation or defined contribution board or committee, whether an employee, an elected official, or a public member, is equally responsible to the appointing authority as every other member on the board or committee and has a strict fiduciary responsibility. All decisions and actions of the board or committee are made as a body, not as an individual. NAGDCA sees no distinction between the responsibilities and accountability of board or committee members based upon employment by the governmental entity or otherwise.

Additionally, the boards of these plans are the recipients of advice, not the providers of advice. As a public body, the boards and committees conduct their meetings in open forums and enter into contracts pursuant to public procurement regulations. They are deliberative bodies. Their role is to receive advice and make policy and administrative decisions in accordance with their fiduciary responsibility to the plan sponsor and the participants of the plan. Discussions among board or committee members are part of the policy making process and are not advice.

It would be a disservice to the public and the participants in these plans if the regulations discourage public members from accepting an appointment to the board or committee. Professional understanding, knowledge, and judgment of financial products by board and committee members provide a non-marketing/sales perspective and often counterbalance the information provided by other financial advisors, investment advisors, and third-party marketers and solicitors to whom the regulations are properly directed. This independent advice would be lost if public members are discouraged from participating in service to their communities.

NAGDCA believes that the Proposed Regulations are, in general, appropriately directed at regulating the activities of municipal advisors who “provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products.” NAGDCA believes that the Dodd-Frank Act is directed at protecting deferred compensation and defined contribution plans and their membership, rather than imposing a burden on those plans.

You also should know that the vast majority of public employer deferred compensation plans are sponsored by relatively small villages, towns, and special districts. Approximately 60% of all deferred compensation plans have less than 25 participants, and nearly 80% have less than 100 participants. The cost associated with registration and continued compliance with the proposed regulations would necessarily be borne by the appointing municipality or the participants in the plans. These plans deserve the protections that the proposed regulations are proposing. However, they do not need the burden of unnecessary registration. In an era of tight fiscal restraints, this would be an additional cost on local government with no apparent commensurate benefit.

In conclusion, NAGDCA urges the SEC to exempt all individuals elected or appointed to the governing board of a public employer sponsored deferred compensation plan or defined contribution plan from the requirement of registering as a Municipal Advisors because:

- Each member of a deferred compensation and defined contribution board or committee:
  - Is an equal regardless of whether they are employees or an elected official of the government entity or a public member. It is inappropriate to conclude otherwise;
  - Are subject to strict fiduciary standards;
- Broad public membership is beneficial to the government entity and the participants in the plan;
- Discouragement of broad public membership would be a detriment to the government entity and the participants in the plan;
- The cost associated with registration on local governments is unwarranted.

NAGDCA expresses its willingness to work with and assist the SEC in developing appropriate guidelines with regard to the regulations of Municipal Advisors. We can be reached through our Legislative Counsel, Susan J. White & Associates, at (703) 683-2573.

Thank you for your consideration of our comments.

Sincerely,



Gay Lynn Bath  
President