



Utah Educational  
Savings Plan<sup>®</sup>

PO Box 145100  
Salt Lake City, UT  
84114-5100  
Phone: 801.321.7188  
Toll free: 800.418.2551  
Fax: 800.214.2956  
Web site: [uesp.org](http://uesp.org)

February 18, 2011

Ms. Elizabeth Murphy  
Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Registration of Municipal Advisors, File No. S7-45-10, SEC Release No. 34-63576

Dear Ms. Murphy:

The Utah Educational Savings Plan (UESP) appreciates the opportunity to comment on Release No. 34-63576 (Release). Under separate cover, the College Savings Plans Network (CSPN), with which UESP is affiliated, provided comments to the Securities and Exchange Commission (Commission) regarding how the proposed interpretation of the registration requirements applicable to "municipal advisors" would affect 529 plans. UESP concurs with the CSPN letter and submits these additional comments for consideration.

UESP is a direct-sold, nonprofit, state-run Section 529 college savings plan. Although UESP is a municipal entity, under the language of the Securities Exchange Act of 1934, as amended, UESP and its employees are excluded from the definition of "municipal advisors." This has resulted in UESP and its employees being generally exempt from registration with and regulation by the Commission and the Municipal Securities Rulemaking Board (MSRB).

The Commission's new interpretation of the term "municipal advisors" will now include unelected board members of municipal issuers who provide "advice" to the governmental entity they represent regarding the issuance of municipal securities and/or the investment of governmental funds. The Utah State Board of Regents (Board) is primarily vested with the control, management, and supervision of the state's public colleges and universities. By statute, the Board also acts in the capacity of UESP's governing board.

The Board is comprised of 19 Regents, 15 of whom are appointed to serve a six-year term by the Utah Governor with the consent of the Utah State Senate. The Governor also appoints a student Regent, who serves a one-year term. In addition, the Board has three *ex officio* Regents, including two elected members of the State Board of Education. Under the Commission's interpretation, 17 of the 19 Board members would be required for the first time to register with both the Commission and the MSRB and be subject to other regulation. UESP is concerned that such requirements will severely limit who will be willing to serve as Board members in the future.

The CSPN letter referenced above articulates UESP's main arguments against subjecting UESP's governing board members to "municipal advisor" registration and regulation requirements. UESP incorporates these arguments into this comment without repeating the detailed points.

In making the arguments to exempt governing Board members from "municipal advisor" registration and regulation requirements, UESP underscores that UESP takes its fiduciary role seriously, including its obligation to protect the thousands of investors who have chosen to save with UESP. These obligations are shared by UESP's plan, employees, governing Board as a whole, and Board members individually. UESP points out that if its governing Board members are exempted from this proposed federal regulation, they will continue to be subject to many important state oversight protections.

Wide-ranging Utah acts cover public bodies and their members, including the Public Officers Code, Procurement Code, Administrative Rulemaking Act, Administrative Procedures Act, Government Records Access and Management Act, and Open and Public Meetings Act. Such general statutes, together with the specific Board and UESP enabling acts, regulate the Board members' conduct, fiduciary responsibilities, and conflicts of interest. In addition, the Board has enacted bylaws, policies, procedures, and rules that govern its members.

UESP prefers that the Commission changes its interpretation of the term "municipal advisor" to not cover any UESP governing Board members, whether elected or not. If such an exemption is not extended to all Board members, the Commission should clarify the term "advice." In the municipal entity governing board context, voting and ordinary board discussions should not be interpreted as giving "advice" to the entity. It is burdensome to obtain separate letter rulings and risky to rely upon individual fact and circumstance analysis for an issue that the Commission should clarify generally.

As UESP's executive director, I am submitting this response to the Release. Thank you for allowing me to offer UESP's perspective for your consideration.

Sincerely,

*Lynne N. Ward*

Lynne N. Ward, CPA  
Executive Director  
Utah Educational Savings Plan