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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*.

<u>Incurrence of a "Financial Obligation"</u>

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

Government Finance Officers Association

Understanding Your Continuing Disclosure Responsibilities

Best Practice
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 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)