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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" <u>would create significant administrative and costly burdens to state and local governments</u>.

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.

<u>Activities that Reflect "Financial Difficulties"</u>

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.

<u>Suggested Revisions</u>

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.*

<u>Effective Date</u>

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.

<u>Estimated Time and Costs Associated with Rule Implementation</u>

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