

**Government Finance Officers Association  
Airports Council International – North America  
American Hospital Association  
American Public Gas Association  
American Public Power Association  
Association of School Business Officials International  
Council of Infrastructure Financing Authorities  
International City/County Management Association  
National Association of Clean Water Agencies  
National Association of College and University Business Officers  
National Association of Counties  
National Association of Health and Educational Facilities Finance Authorities  
National Association of Regional Councils  
National Council of State Housing Agencies  
National League of Cities  
National Special Districts Coalition  
State Debt Management Network  
The United States Conference of Mayors**

September 29, 2022

The Honorable Charles Schumer  
Majority Leader, U.S. Senate  
S-221 The Capitol  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Minority Leader, U.S. Senate  
S-230 The Capitol  
Washington, D.C. 20510

The Honorable Jack Reed  
Chairman, Senate Armed Services Committee  
228 Russell Senate Office Building  
Washington, DC 20510

The Honorable Jim Inhofe  
Ranking Member, Senate Armed Services  
Committee  
228 Russell Senate Office Building  
Washington, DC 20510

Dear Leader Schumer, Minority Leader McConnell, Chairman Reed, and Ranking Member Inhofe:

On behalf of the undersigned municipal bond issuer groups, and the tens of thousands of state and local governments and nonprofit entities we represent, we write to express our concerns about S. 4295, the *Financial Data Transparency Act (FDTA)* and its possible inclusion as an amendment to the FY23 National Defense Authorization Act. To be clear, **state and local governments do not oppose transparency and accessibility of information**, and in fact, significant financial transparency standards are already in place. Most issuers of municipal securities (e.g., entities represented by the undersigned groups) adhere to governmental reporting standards established by the Governmental Accounting Standards Board (GASB), while others follow standards as determined under state law.<sup>1</sup> In whole, issuers of municipal securities exhibit transparency to stakeholders through very established and standardized means.

We are concerned about Section 203's impact on state, county, municipal, public utilities, hospital

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<sup>1</sup> [https://www.accountingfoundation.org/page/PageContent?pageId=/overview-accounting-and-standards/gaap/gaapstateandlocal.html#section\\_2](https://www.accountingfoundation.org/page/PageContent?pageId=/overview-accounting-and-standards/gaap/gaapstateandlocal.html#section_2)

and education entities required to submit financial information to the Municipal Securities Rulemaking Board (MSRB) for several reasons. Among others, a primary concern is that this provision would result in an unfunded mandate on state and local governments due to the increased costs to ensure systems are able to comply with future standards. Further, this provision represents a substantial federal overreach into the content and structure of issuer disclosures, and more broadly the accounting and reporting principles of government entities, contrary to the principles of federalism. Finally, Section 203 could create more confusion and ultimately reduce transparency by forcing vastly different kinds of governmental entities to report using a rigidly standardized schema or taxonomy.

### Unfunded Mandate

This draft legislation imposes an unfunded mandate on issuers of state and local governments that will result in significant costs. The Government Finance Officers Association (GFOA), the nation's leading entity on governmental financial reporting best practices and training, estimates that of the roughly 40,000-issuer communities currently responsible for reporting annual comprehensive financial reports (ACFRs):

- At least 15 percent of governments (and nonprofits) will buy and implement new software at a minimum of \$100,000 per government,
- At least 10 percent will need to reconfigure existing systems using outside consultants ranging from \$100,000 to \$200,000,
- At least 25 percent will struggle through updating their systems on their own by utilizing staff capacity at a minimum cost of \$50,000, and
- The remaining governments, perhaps 50 percent, will develop “shadow systems” and use redundant processes to deal with additional reporting needs that would range from \$5,000 to \$100,000.

This means that the costs for all affected public and charitable entities to comply with the mandate would exceed well over \$1.5 billion within just two years and a disproportionate burden would likely be placed on smaller entities with the fewest resources. Governments and nonprofit entities that will need to buy and implement new software or to reconfigure existing systems will likely have to hire external professionals and dedicate staff to implement this provision, adding ongoing costs.

### Federal Overreach and Circumventing the Tower Amendment

This bill is an unprecedented and substantial overreach by the federal government. The legislation's section 203 would direct the MSRB to prescribe data standards on issuers of municipal securities. The MSRB was created by Congress in 1975 under Section 15B of the Exchange Act and enhanced by the Dodd Frank Act in 2010.<sup>2</sup>

Under Section 15B(d)(1) of the Act, the MSRB and U.S. Securities and Exchange Commission (SEC) are prohibited from requiring issuers of municipal securities to make filings at the SEC or MSRB prior to the sale of securities.

Further, Section 15B(d)(2) states that “[the MSRB] is not authorized under this title to require any

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<sup>2</sup> <https://www.sec.gov/rules/final/2018/34-83885.pdf> (pages 8-9)

issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer.”

In fact the MSRB’s own *The Role and Jurisdiction of the MSRB* states that the MSRB is not authorized to regulate municipal entities (page 2).<sup>3</sup> Additionally, as both the SEC and MSRB are prohibited from dictating issuer submissions (outside of anti-Fraud provisions) prior to a sale, and the MSRB is prohibited from dictating information following a sale, the FDTA would not conform to existing law. Section 203 could irreparably breach these important guardrails that uphold congressional intent for nearly 50 years, and the tenets of federalism that are deeply rooted in our nation since its founding.

When the MSRB was given authority in 2008 to establish and manage the Electronic Municipal Market Access (EMMA) repository system for on-going municipal securities disclosures, the SEC approved allowing the MSRB to mandate that documents be sent in PDF format. In fact, under Rule 15c2-12, the MSRB is authorized to set the “electronic format” in which submissions are made. Later, in 2009, the SEC approved an MSRB rule applicable to broker-dealers underwriting new issues of municipal bonds, which also allowed the MSRB to mandate that the underwriter submit the issuer’s offering document to the MSRB in PDF format. However, the FDTA would go much further than dictate how a filing can be loaded into the system, and would instead allow the MSRB to establish “data standards.” The FDTA as drafted could be interpreted to empower the MSRB to impose standards that could dictate both the structure and content of disclosures, and to indirectly prescribe accounting and reporting principles to be used by state and local governments and entities. Municipal Market Analytics, Inc. (MMA), expects that were this bill to become law in its current form, large numbers of municipal issuers will eschew the capital markets altogether for direct bank loans or private placements.<sup>4</sup>

Under SEC Rule 15c2-12, dealers are generally required when underwriting municipal securities to enter into a Continuing Disclosure Agreement (CDA) with issuers stating that the issuer will provide certain information on an ongoing basis to the MSRB (e.g., annual financial information, material events.) for as long as the bonds are outstanding. However, while identifying certain categories of disclosures to be provided by the issuer under the CDA, Rule 15c2-12 does not specifically dictate the content, amount and manner of presentation of financial and non-financial information that must be provided. That information is determined between the issuer, counsel and others on the deal team, is reflected in the CDA of each issuance and is designed to allow the on-going disclosures to be based on the financial and operating data that is relevant to a particular issuer and financing. That determination is intentional provided the rich diversity in types of governmental and nonprofit issuers in the public market and the financing needs and mechanisms each of them face. The FDTA could be seen as a tool by which the MSRB could undertake to effectively establish the standards for content, amount and manner of presentation of disclosures that the SEC felt it could not do under Rule 15c2-12.

Further, governmental accounting and financial reporting standards, and the data therein, differ greatly from corporate standards. We are unaware of expertise either at the SEC or MSRB, bodies that regulate market functions rather than data standards, to be able to address and well implement a governmental financial reporting data system that would not exacerbate an already tenuous and

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<sup>3</sup> <https://www.msrb.org/msrb1/pdfs/Role-and-Jurisdiction-of-MSRB.pdf> (page 2)

<sup>4</sup> [MMAOutlook091222.pdf \(mma-research1.com\)](https://mma-research1.com/MMAOutlook091222.pdf)

expensive endeavor.

### Significant Financial Transparency Standards are Already in Place

Most issuers of municipal securities adhere to governmental reporting standards established by GASB (unless they follow other standards established under state law). There are over 100 GASB statements in place that were vetted through a comprehensive review and public comment process, and any conflicting or differing standards and requirements would be confusing and costly to the entities required to implement, as well as to those who rely on governmental financial information. GASB often takes 5-10 years or more to go from project inception to implementation when developing their statements. Thus, given the very short timeframe in which FDTA provides for rulemaking and full implementation of the standards, along with no requirement to consult national organizations representing public entities (such as those listed above), could certainly result in the creation of standards and requirements that conflict with or differ from current GAAP standards.

Additionally, state and local governments and entities issuing municipal securities must adhere to anti-fraud standards under SEC Rule 10b-5 and numerous other state and local sunshine laws that make budget and financial information to be publicly available.

### Conclusion

We would like to reiterate that we support and encourage transparency and accountability in governmental financial reporting. However legislative initiatives like the FDTA's Section 203 would only hinder efforts already in place, therefore we must oppose the inclusion of this provision in any matters moving forward in Congress. We look forward to hearing from and working with you on this issue.

Sincerely,

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National Assoc. of Health and Educational Facilities Finance Authorities, Chuck Samuels, 202-434-7311  
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National Council of State Housing Agencies, Garth Rieman, 202-624-7710  
National League of Cities, Michael Gleeson, 202-626-3091  
National Special Districts Coalition, Cole Karr, 417-861-7418  
State Debt Management Network, Rachael Eubanks, Michigan State Treasurer (Chair of SDMN), 202-630-1880  
The United States Conference of Mayors, Larry Jones, 202-861-6709

CC: Members of the United States Senate