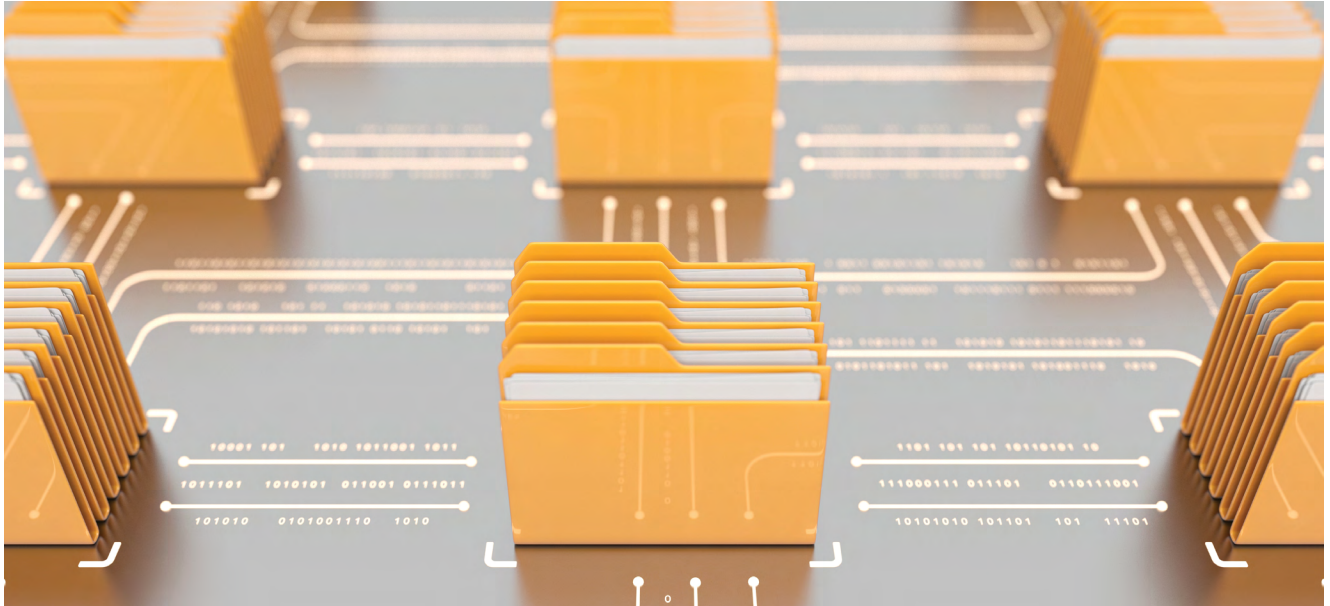


In Brief

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FEDERAL UPDATE

The Federal Data Transparency Act: Uh-Oh

BY GALEN MCDONALD

GFOA members need to be aware of proposed legislation likely to pass that would mandate governments to report financial information using uniform reporting categories, or “data standards.” Here is what you need to know.

What is the FDTA?

The FDTA (S. 4295) would require the Municipal Securities Rulemaking Board (MSRB) to “establish data standards.” It would require joint rulemaking for regulated entities for two years after passage, and two years for implementation, with full implementation and compliance required beginning in 2027. The act is sponsored by Senators Mark Warner (D-VA) and Mike Crapo (R-ID).

Why has the FDTA been a concern?

You might wonder why greater transparency would be an issue. After

all, who opposes transparency? Well, significant financial transparency standards are already in place. There are, in fact, several reasons to worry about this act. It poses an unfunded mandate; doesn’t provide enough time for implementation; will cause confusion, potentially diminishing transparency; and presents a substantial federal overreach. Let’s look at each of these points.

The FDTA poses an unfunded mandate and seeks to establish the new standards within an unreasonable timeframe.

The provision could result in an unfunded mandate because of the increased costs state and local governments would face to ensure their systems comply with future standards. GFOA 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 need to buy and implement new software at a minimum cost of \$100,000 per government.
- At least 10 percent will need to reconfigure existing systems using outside consultants at a cost of \$100,000 to \$200,000.
- At least 25 percent will struggle through updating their systems on their own by using staff capacity, costing at least \$50,000.
- The remaining governments, perhaps 50 percent, will develop shadow systems and use redundant processes to deal with additional reporting needs, at a cost of anywhere from \$5,000 to \$100,000 each.

Complying with the mandate puts a disproportionate burden on smaller entities with the fewest resources.

As for the timeframe, there is no requirement to solicit input from issuers as drafted—which is already troubling. Two years is not enough time to solicit input and then determine new metrics for issuers; the Governmental Accounting Standards Board (GASB) often takes between five and 10 years to go from workplan to implementation when developing statements.

The act could create further confusion or even reduce the transparency of publicly available information.

Despite the legislation's apparent goal of creating more data transparency, it will likely do the opposite, as the Public Finance Network (which includes GFOA) coalition letter to the U.S. Senate explained.¹ (GFOA is a member of the coalition.)

Most issuers of municipal securities adhere to governmental reporting standards established by the GASB, while others follow standards determined by state law. Issuers of municipal securities make their data transparent to stakeholders through very established and standardized means. The GASB has issued more than 100 statements 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 them, as well as those who rely on governmental financial information.

In addition, the FDTA provides a very short timeframe for rulemaking and full implementation of the standards, and there is no requirement to consult national organizations representing public entities.

These issues are likely to result in the creation of standards and requirements that conflict with or differ from current generally accepted accounting standards. Creating uniform standardized reporting across all entities in the municipal market (states, counties, cities, school districts, water systems, transportation systems, universities, and more) would be quite a substantial challenge in and of itself.

The FDTA would force entities to put even more time and resources into reporting data that is already available.

Complying with the mandate puts a disproportionate burden on smaller entities with the fewest resources.

The act poses an unprecedented, substantial overreach by the federal government.

Section 203 of the FDTA will 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. According to the SEC, "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 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.'"²

The MSRB's own *The Role and Jurisdiction of the MSRB* states that the MSRB is not authorized to regulate municipal entities.³ Additionally, as both the SEC and MSRB are prohibited from dictating issuer submissions (outside of anti-fraud provisions) before a sale, and the MSRB is prohibited from dictating information following a sale, the FDTA would not conform to existing law. As the coalition letter states, Section 203 could irreparably breach these important guardrails that have upheld congressional intent for nearly 50 years, and the tenants of federalism that are deeply rooted in our nation since its founding.

It's probably going to pass anyway. What now?

In the unfortunate—but likely—event that the FDTA passes, local governments should keep a few things in mind:

- There will be a series of comment periods over the next 24 months to solicit feedback. GFOA will issue guidance for responding to the comment periods as they are announced. We need our members to help us all make sure that implementation is as painless as possible.
- This legislation is not generally accepted accounting principles (GAAP), and GASB standards will remain in place. The new legislation does not interrupt your government's normal reporting requirements; it initiates new reporting requirements.
- As news about the legislation becomes available, GFOA urges governments to connect with other jurisdictions and to share resources and tools for data collection and reporting, and to brainstorm collectively.
- Reach out to GFOA's Federal Liaison Center (gfoa.org/flc) if you need more support.

Conclusion

GFOA appreciates all the effort our members have put in, contacting your representatives and sharing reasons why this legislation will have a negative impact on your communities, and we wish there was better news, given all of the hard work you've done. Unfortunately, this section of the legislation isn't likely to be removed or adequately modified. But through it all, GFOA will be here to support and guide you. 📧

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➡ FINDING FURTHER RESOURCES

See gfoa.org/new-financial-reporting-requirements-proposed for information and links about the Federal Data Transparency Act and GFOA's response.

¹ <https://www.gfoa.org/materials/pfn-concerns-fdta>.

² See sec.gov/rules/financial/2018/34-83885.pdf.

³ See msrb.org/msrb1/pdfs/Role-and-Jurisdiction-of-MSRB.pdf.