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The Financial Data Transparency Act: Changes to Reporting of Municipal Securities Disclosure and Impact on Health Care Organizations

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Health care organizations that are borrowers with respect to municipal securities should monitor the ongoing rulemaking process under the Financial Data Transparency Act of 2022 (FDTA). The

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FDTA requires that certain federal financial regulatory agencies, including the U.S. Securities and Exchange Commission (SEC), establish new technical data standards for the reporting of financial information to such agencies that would, among other things, incorporate common identifiers and require that the data in such financial information be fully searchable and machine readable. The data standards are expected to impact issuers of municipal securities and conduit borrowers, including hospitals and health systems, that currently report disclosure information to the Municipal Securities Rulemaking Board (MSRB) on the Electronic Municipal Market Access (EMMA) system.

In August 2024, the SEC and certain other federal financial regulatory agencies proposed FDTA joint standards (Proposed Joint Rule) and invited public comment until October 21, 2024. A number of municipal market industry participants weighed in on the Proposed Joint Rule during the comment period. Following finalization of the Proposed Joint Rule, the next phase of rulemaking involves the development of agency-specific rules that implement the joint standards, including SEC rules (SEC Rule) applicable to municipal securities issuers and obligors. While the FDTA does not mandate a specific effective date for data standards applicable to municipal securities, such standards could take effect as early as 2027. Given the potential challenges associated with the expected reporting format changes, health care organizations participating in the municipal securities market would benefit from learning about the proposed data standards and related concerns.

This article provides a summary of the FDTA and the Proposed Joint Rule, including reactions from municipal securities industry participants as well as the expected timeline of the next stages of the FDTA rulemaking process. This article also explores the potential costs and benefits to health care organizations that will need to prepare for the coming data standards.

Brief Description of the FDTA

The FDTA was enacted on December 23, 2022, as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.¹ The FDTA directs certain federal agencies (Covered Agencies)² to establish data standards for financial information disclosures reported to each Covered Agency. The FDTA defines the term “data standard” to mean “a standard that specifies rules by which data is described and recorded.”³ Pursuant to the FDTA, data standards, when established, shall include common identifiers, such as a legal entity identifier, and the data standards shall, to the extent practicable:

- (i) Render data fully searchable and machine readable;
- (ii) Enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements;
- (iii) Ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata;

- (iv) Be nonproprietary or made available under an open license;
- (v) Incorporate standards developed and maintained by voluntary consensus standards bodies; and
- (vi) Use, be consistent with, and implement applicable accounting and reporting principles.⁴

Municipal industry participants expect that the SEC's implementation of the data standards will be influenced by existing structured data reporting requirements on public reporting companies, which mandate the use of the eXtensible Business Reporting Language (XBRL) format and the inline XBRL format for certain filings, although other structured data formats may ultimately be designated instead.⁵

The FDTA contemplates that the SEC will adopt data standards applicable to financial information disclosures submitted to EMMA that are compatible with the data standards jointly issued by the Covered Agencies.⁶ While conduit borrowers and municipal issuers are not directly required to submit information to the SEC under the securities laws, issuers and obligated persons that contractually agree to provide information to EMMA through continuing disclosure undertakings in connection with a bond transaction will likely be subject to the data standards when making such submissions. The scope of conduit borrowers and issuers subject to the requirements of the FDTA will be set forth in the SEC Rule.

The FDTA provides that it may not be interpreted to affect the operation of existing limits upon the authority of the SEC and MSRB to require filings by, or on behalf of, municipal issuers or obligated persons.⁷ Therefore, the FDTA does not expand the scope of substantive municipal securities disclosure requirements and instead prescribes standards regarding the format and presentation of financial information reported to EMMA. The FDTA does not specify that financial data is strictly limited to financial statements and, as discussed further below, may potentially impact information included in official statements or event notices required pursuant to continuing disclosure undertakings. The scope of financial data subject to the FDTA will be determined by the SEC in the SEC Rule.

In an acknowledgment of the complexities of implementing the data standards in the municipal market, the FDTA requires that the SEC consult market participants in establishing municipal market data standards.⁸ Further, the SEC may scale the data standards for municipal securities in order to reduce any "unjustified burden on smaller regulated entities" and is mandated to "seek to minimize disruptive changes to the persons affected by" the rules adopting the data standards.⁹

Joint Data Standards

As an initial rulemaking step under the FDTA, on August 2, 2024, the SEC along with the other Covered Agencies disseminated the Proposed Joint Rule for public comment.¹⁰ Under a second rulemaking step under the FDTA, the Covered Agencies will issue agency-specific rules that implement the final joint standards. The FDTA affords each Covered Agency some flexibility in considering how to implement such standards.¹¹ Intended to make financial data disclosed to investors "more accessible, uniform, and useful to the public,"¹² the Proposed Joint Rule addressed

several topics, including:

- **Collections of Information:** The FDTA applies to certain “collections of information” reported by financial entities under the jurisdiction of the respective Covered Agency. The Covered Agencies have proposed the adoption of the widely used Paperwork Reduction Act of 1995 definition of “collections of information.” The SEC is permitted to further interpret the scope of the FDTA’s applicability to its own collections of information in the SEC Rule.
- **Legal Entity Identifier (LEI):** The FDTA requires the joint standards to include “a common nonproprietary legal entity identifier that is available under an open license for all entities required to report to” the Covered Agencies. The Covered Agencies propose to establish a global identifier standard as the legal entity identifier joint standard.
- **Other Common Identifiers:** In addition to the LEI, the Covered Agencies propose to establish common identifiers. For an identifier of financial instruments, which includes municipal securities, the Covered Agencies propose to establish the Financial Instrument Global Identifier (FIGI), which as proposed would replace CUSIP, the current identifier assigned to municipal securities.
- **Data Transmission and Schema and Taxonomy Format Standards:** The Covered Agencies propose to establish that the data transmission or schema and taxonomy formats used by each Covered Agency have a principles-based standard that would:
 - Render data fully searchable and machine readable;
 - Enable high quality data through schemas, with accompanying metadata, which clearly define the semantic meaning of the data;
 - Ensure that data exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in machine-readable metadata; and
 - Be nonproprietary or available under an open license.

In the Proposed Joint Rule, the Covered Agencies propose deferring to each individual Covered Agency the ability to determine in their respective rulemakings which data transmission and schema and taxonomy format standard to adopt.

Next Steps and Expected Timeline

On January 20, 2025, President Trump issued an executive order preventing any federal agency, including the SEC, from issuing new rules until an agency head appointed by the President has reviewed and approved such rules. The executive order could potentially delay the issuance of the final rules regarding the joint data standards and the overall timeline set forth below. ¹³

- **Early 2025**—Initially expected at the end of 2024, the Covered Agencies shall release final rules that establish the joint data standards.
- **Mid- to Late 2026**—The SEC is expected to publish its proposed data standards for public comment, including data standards for the municipal market; the MSRB will likely publish proposed rule adjustments and information system modifications for comment.
- **By December 2026**—The data standards established in the final rules by the Covered Agencies become effective not later than two years after the date on which the final rules are

promulgated.

- **By December 2026**—The SEC establishes data standards for the municipal market regarding submission of financial information on EMMA by issuers and nonprofit borrowers.
- **2027 and Thereafter**—The FDTA does not mandate an effective date for the data standard rules established by the SEC for municipal financial disclosure on EMMA, but the compliance date for the SEC Rule is expected to be in early 2027.

Municipal Securities Industry Reaction to the Proposed Joint Rule

The SEC received over 100 comments from a wide range of municipal market industry groups as well as state and local governments.¹⁴ Commenters reacted to the proposals set forth in the Proposed Joint Rule and previewed some of their thoughts on the forthcoming SEC Rule that will govern the municipal securities market. Many of the comment letters expressed the view that the Proposed Joint Rule, as applied to municipal market disclosure, would violate the Tower Amendment, which prohibits both the SEC and the MSRB from directly or indirectly requiring issuers of municipal securities to file documents with the SEC and the MSRB prior to a sale and that the costs to be incurred in complying with the rules promulgated under the FDTA are an unfunded mandate.¹⁵ Many comment letters also noted that certain proposals contained within the Proposed Joint Rule, most notably the proposal to replace CUSIP with FIGI, go beyond the requirements of the FDTA.

Notably, the National Association of Health and Educational Facilities Finance Authorities (NAHEFFA), a national trade association for statewide and other issuers of municipal securities for charitable, nonprofit institutions, including health care organizations, submitted a comment to the SEC.¹⁶ NAHEFFA noted that while the Proposed Joint Rule does not apply to its member bond-issuing entities, it would apply to its nonprofit borrowers, including health care organizations. The two main points that NAHEFFA raised in its letter were the challenges it faced in responding to the Proposed Joint Rule without knowing what approach the SEC Rule would take and the overall lack of necessity of the FDTA, noting in particular the lack of demand from the general public or investment community for such regulations. NAHEFFA stated that the absence of a need for the rules made it difficult for the organization to articulate what an appropriate rule should look like. Instead, NAHEFFA encouraged an approach of the “absolute minimum required by law that is the least burdensome to those regulated, particularly for many smaller entities, in our case, the nonprofit borrowers.” A call for the SEC to scale its rule to take into account the size and complexity of the municipal issuer and borrower entities was a common refrain among other commenters. Finally, NAHEFFA, along with many other industry groups including the National Association of Bond Lawyers,¹⁷ encouraged the Covered Agencies to preserve flexibility in the final Joint Rule so the SEC can design rules that will work with the particular dynamics of the municipal securities market. The Covered Agencies will take the comments into account when approving the final joint rule, which may diverge from the Proposed Joint Rule.

Potential Impacts to Health Care Organizations

Once fully implemented, the FDTA will significantly alter how conduit borrowers and municipal issuers provide financial disclosures on EMMA. In particular, health care organizations that submit financial information to EMMA in connection with their continuing disclosure obligations will likely need to change the format of their current reporting to conform to the final data standards. Additionally, financial statements that are included as exhibits to official statements relating to conduit borrowers and municipal issuers but were originally submitted by underwriters to EMMA pursuant to MSRB Rule G-32¹⁸ may also be subject to the data standards.

While the FDTA may improve market transparency and reduce long term reporting costs for entities by increasing standardization within the municipal securities market,¹⁹ the following are potential concerns that may affect health care organizations:

Increased Costs, Training, and Staffing. The major concern raised by critics of the FDTA relates to the anticipated costs of financial information preparation to comply with the data standards, with respect to initial compliance in connection with a new offering of municipal securities and on an ongoing basis.²⁰ The changes in data standards will necessitate an organizational investment in training and possibly additional staffing. Affected organizations may need assistance from consultants or advisors regarding the preparation and review of financial reports. Borrowers may also need to update their existing technology and purchase appropriate software.

Proponents of the FDTA suggest that aside from certain upfront costs, organizations may eventually see reductions in long term costs and may benefit from streamlined internal management of data, pointing to the experience of some corporate issuers who have adopted XBRL formats.²¹ However, given that the SEC has not conducted an analysis of the economic consequences for the Proposed Joint Rule on municipal issuers and borrowers, it is not clear at this time whether there would be material differences in the operations of nonprofit organizations as compared to corporate regulated entities that may affect the realization of such benefits.

Disproportionate Effect on Smaller Borrowers. Smaller health care organizations that are infrequent participants in the municipal market and face more budgetary limitations may disproportionately struggle with implementing the standards as compared to larger systems that may be able to spread out the impact over time through a sequence of bond issuances. As discussed earlier, the FDTA authorizes the SEC to scale data-reporting requirements and minimize disruption, so the SEC may “explore extended phase-in periods, permanent exemptions for certain entities or filings, or other appropriate accommodations.”²²

Potential Differences from Existing Accounting Standards. The required format under the data standards may differ from the Financial Accounting Standards Board (FASB) standards familiar to nonprofit borrowers and from Governmental Accounting Standards Board (GASB) standards that are applicable to health care district hospitals and other municipal issuers. The differences in accounting standards may generate increased work by an organization’s auditors in connection with the preparation of audited financial statements.

Quality, Timing, and Extent of Financial Disclosures. The adoption of a new data format may slow down or impact the timeliness of disclosure submissions to EMMA. Further, financial information or specific line items unique to a particular hospital or health care organization may get “lost” in the

process of standardization and tagging. A standardized format creates less opportunity for the inclusion of narratives or context, which may lead to a decline in the quality of disclosure, which may in turn harm borrowers as well as investors. Finally, a health care organization may consider limiting its voluntary disclosure to avoid incurring unnecessary submission burdens.

Reduction in Public Offerings. Conduit borrowers may be driven away from the public bond market to avoid a costly data-standardization process, which may also have unintended pricing impacts on other borrowers who remain in the market. Viable financing options for nonprofit borrowers may be reduced to bank or private financings that are not subject to continuing disclosure requirements.

CUSIP and FIGI. As discussed above, one of the proposals under the Proposed Joint Rule is to replace CUSIP, the current bond identifier used in municipal securities transactions, with FIGI. Such a change could lead to market disruption and challenges in addressing prior outstanding bond transactions that use CUSIP identifiers.

Legal Entity Identifiers. The LEI Format may be problematic for conduit borrowers as it may inadequately reflect obligated parties and relationships between obligors in the municipal market. For large health systems with obligated groups or credit groups, it is not clear whether LEIs would be required for all of the members. SEC Commissioner Mark T. Uyeda raised an additional concern in the case where the SEC and the other Covered Agencies “mandate the exclusive use of LEI from a specific organization.”²³ In his statement, Commission Uyeda noted that requiring an LEI could entail initial and ongoing fees to a private third party, which “raises significant concerns—especially when such fees are not subject to approval by Congress or the Commission.” If a municipal issuer or borrower “seeks to issue tax-exempt bonds . . . then it needs to purchase an LEI before it can submit materials to the Municipal Securities Rulemaking Board,” which increases borrower costs.

Legal and Financial Consequences of Noncompliance. The FDTA is not explicit about the consequences of noncompliance with the data standards. However, the new SEC Rule is likely to address financial or other legal consequences for failure to comply with the data standards.

Conclusion

Many municipal securities industry groups have already begun their efforts to prepare their various constituent groups and communicate recommendations. Health care organizations and systems that will be affected by the municipal market data standards promulgated under the FDTA should consult with their advisors and key professional associations to consider whether there are comments they would like to submit with respect to the forthcoming SEC Rule that will be focused on the municipal securities market.

Borrowers may also want to begin to evaluate the format in which they have typically submitted financial information to EMMA and consider internally whether there will be any challenges with converting to a structured and open data format. Technology upgrades and accounting impacts may also need to be considered. In the process of considering the potential impact of the FDTA, borrowers should be wary of acting or spending resources too soon. At this point in the FDTA

timeline, health care organizations should be informed about ongoing developments and evaluate areas of potential change and costs, but they should avoid any early financial commitments until the SEC offers proposed standards applicable to the municipal securities market.

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¹ Pub. L. No. 117-263, tit. LVIII (2022).

² The Covered Agencies include the Commodity Futures Trading Commission, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Federal Reserve Board, National Credit Union Administration, U.S. Securities and Exchange Commission, and Department of the Treasury.

³ Pub. L. No. 117-263, tit. LVIII, § 5811 (2022), amending 12 U.S.C. § 5334.

⁴ *Id.*

⁵ Pursuant to Section 5825(b) of the FDTA, the SEC has published several reports to Congress regarding the public and internal use of machine-readable data for corporate disclosures. *See, e.g.*, U.S. Securities and Exchange Commission, *Semi-Annual Report to Congress Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures* (Dec. 2024), <https://www.sec.gov/files/2024-fdta-machine-readable-data-report.pdf>.

⁶ Pub. L. No. 117-263, tit. LVIII, § 5823(a) (2022).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* § 5823(b)(2).

¹⁰ The Proposed Joint Rule was subsequently published in the *Federal Register* on August 22, 2024, <https://www.federalregister.gov/documents/2024/08/22/2024-18415/financial-data-transparency-act-joint-data-standards>.

¹¹ *See* U.S. Securities and Exchange Commission, *Fact Sheet: Financial Data Transparency Act: Proposed*

Joint Data Standards, <https://www.sec.gov/files/33-11295-fact-sheet.pdf>.

- [12](#) Chair Gary Gensler, *Statement on Financial Data Transparency Act Proposed Joint Rulemaking* (Aug. 2, 2024), <https://www.sec.gov/newsroom/speeches-statements/gensler-statement-financial-data-transparency-act-080224>.
- [13](#) See <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review>.
- [14](#) See comments on Proposed Joint Rule, <https://www.sec.gov/comments/s7-2024-05/s7202405.htm>.
- [15](#) The U.S. Supreme Court decision in *Loper Bright Enters. v Raimondo and Relentless, Inc. v Dep't of Commerce*, 603 U.S. 369 (2024), together with the Tower Amendment (15 U.S.C. § 78o-4(d)), may serve as the basis for further legal challenges to the FDTA.
- [16](#) See letter from Charles A. Samuels, General Counsel, NAHEFFA to SEC Secretary, dated Oct. 21, 2024, <https://www.sec.gov/comments/s7-2024-05/s7202405-533655-1530042.pdf>.
- [17](#) See letter from the National Association of Bond Lawyers to Vanessa Countryman, SEC Secretary, Dennis Hermreck, SEC Office of Rulemaking, Division of Corporation Finance and Parth Venkat, SEC Office of the Chief Data Officer, dated Oct. 21, 2024, <https://www.sec.gov/comments/s7-2024-05/s7202405-532795-1528622.pdf>.
- [18](#) MSRB Rule G-32 (Disclosures in Connection with Primary Offerings) requires that underwriters submit certain information to EMMA in connection with primary offerings, including official statements. See <https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-32>.
- [19](#) For a discussion of the advantages and disadvantages of structured data implementation, see Commissioner Hester Peirce, *Escaping the Data Swamp: Remarks before the RegTech 2023 Data Summit* (Apr. 11, 2023), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-data-summit-041123>. See also comments on Proposed Joint Rule, <https://www.sec.gov/comments/s7-2024-05/s7202405.htm>.
- [20](#) *Id.*
- [21](#) See, e.g., U.S. Securities and Exchange Commission, *Semi-Annual Report to Congress Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures* (Dec. 2024), <https://www.sec.gov/files/2024-fdta-machine-readable-data-report.pdf>.
- [22](#) See Commissioner Hester Peirce, *Escaping the Data Swamp: Remarks before the RegTech 2023 Data Summit* (Apr. 11, 2023), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-data-summit-041123>.
- [23](#) Commissioner Mark T. Uyeda, *Statement on Financial Data Transparency Act Proposed Joint Standards* (Aug. 2, 2024), <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-financial-data-transparency-act-080224>.

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