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GFOA Debt Committee Releases Urgent Member Guidance for COVID-19 Debt Service and Disclosures.

GOVERNMENT FINANCE OFFICERS ASSOCIATION

URGENT MEMBER GUIDANCE

IMPORTANT CONSIDERATIONS to Maintain Your Entity's Debt Management Program and Disclosure Responsibilities During the COVID-19 Crisis

1. Confirm Debt Service Payments Are Made. Governments should confirm that debt service payments are made on time. Considering many state and local finance offices are operating in unconventional ways (due to work in place/work from home orders), GFOA encourages governments to pay particular attention to payment processes and staff to fulfill this obligation. In addition, one reaction to the current COVID-19 crisis is to adopt laws and ordinances that delay deadlines and delays payments. Governments should be aware that debt service payments cannot be subject to such laws and ordinances. Questions on relief from debt service payments should be discussed with your bond team.

- https://www.gfoa.org/debt-management-policy

2. Disclosures Related to COVID-19 Crisis Should Be Factual. Governments may be facing various fiscal challenges due to the crisis. Further, some public sectors may be affected more immediately than others. While urgency is important, governments should take special care to put into context what these challenges are when choosing to disclose the various problems caused by COVID-19. In addition, disclosure should be factual and governments should be hesitant to disclosure any estimates or projections of revenues and budgets just for the sake of providing such estimates or projections.

3. Communicating with Outside Professionals. Governments should keep in contact with their bond counsel and other outside professionals. As governments address various disclosure matters, and managing their debt portfolio, they should initiate and maintain communications with their bond team.

- https://www.gfoa.org/selecting-bond-counsel
- https://www.gfoa.org/selecting-and-managing-municipal-advisors

4. Interim/Voluntary Disclosures. Voluntary and interim disclosures are a helpful way to keep investors apprised of the government's fiscal conditions. Be sure to make filings and/or place information on your entity's investor relations web page and consider making the filings available in the EMMA system, based on facts and information that are already developed by your entity. It may also be useful to discuss these disclosures with bond counsel and/or other bond team professionals. Issuers should be mindful when they provide specific information as of certain date, which may change soon thereafter, there should be a note in the voluntary filing that they are not obligated to prepare and file updates in relation to that filing.

- https://www.gfoa.org/understanding-your-continuing-disclosure-responsibilities-0
- https://www.gfoa.org/maintaining-investor-relations-program

5. Selective Disclosure. When discussing impacts on the government of COVID-19 with investors, governments should be careful about making "selective disclosures". Material information should be available to everyone on an equal basis. Governments should be careful about providing information that has not yet been disclosed on their website for investors or filed on EMMA. Similar care should be taken with Rating Agencies – governments should let them know when giving them non-public information.

6. Disclosures Needed for Primary Offerings. In primary offering documents, Governments may need to provide COVID-19 related disclosures for debt being issued. Governments may be requested to provide supplemental disclosures to address any material changes between the date of the disclosure document and the closing date.

- https://www.gfoa.org/primary-market-disclosure

7. Know Your Annual Disclosure Filing Dates. Governments should always be aware of the dates in their continuing disclosure agreements (CDA) when annual disclosures are due to EMMA, and make those filings accordingly. If a government is unable to make a filing, due to current circumstances (e.g., financial statements and/or audits not available), follow the requirements contained in your CDA, which may require a filing with EMMA with explanation as to why the submission is late. If annual disclosure submissions did not occur as noted in your CDA, that information will need to disclosed in future issuance documents. Again, it is important to note the reasons why the submission(s) was late – due to the inability to complete financials and/or audits or other reasons related the COVID-19 crisis – underwriters of future issuances will need to understand these reasons.

- https://www.gfoa.org/primary-market-disclosure
- https://www.gfoa.org/understanding-your-continuing-disclosure-responsibilities-0

8. Material Event Filings. Governments are reminded that when a credit is downgraded by a credit rating agency that a material event filing must be made within 10 days in the EMMA system. Other events resulting from the COVID-19 crisis may also require a material event filing. Governments are encouraged to speak with their bond counsel prior to making material event filings about the need to make and information to provide in the filing. Importantly, the SEC Rule 15c2-12 10-day reporting requirement for listed material events is NOT relaxed during this time. Please be mindful of material events and track the time that has lapsed to ensure timely reporting within the 10-day reporting requirement. Governments should be aware of all material events identified in their CDA and SEC Rule 15c2-12, as noted here:

- https://www.gfoa.org/sites/default/files/GFR0849.pdf
- https://www.sec.gov/rules/final/2018/34-83885.pdf

9. EMMA Filings. Governments should make sure that when making annual, continuing, or voluntary disclosure filings within the EMMA system that they are filed correctly. The MSRB makes the following resources available to assist issuers with submitting disclosures to the EMMA system:

- Continuing Disclosure Submission Manual
- Continuing Disclosure Submission Video Tutorials
- Selecting Financial/Operating Disclosure Categories on EMMA Dataport
- Selecting Event Disclosure Categories on EMMA Dataport

10. Know Your State Laws, Local Ordinances and Policies and Procedures Related to Debt Products in Current Market Conditions. As the financial markets are very fluid, it is important for governments, especially those who have planned issuances in 2020, to monitor the debt market, and speak with their municipal advisor or other professionals about the market's impact on your entity. Financial institutions have many options to assist governments with both short and long term borrowing needs. Additionally, new financial products may be considered and implemented by the federal government to help state and local governments through the crisis with conditions such as access to loans for operating and other purposes related to an entity's needs to provide for their citizens during the COVID-19 crisis. Knowing what types of financings are legal and allowable for your entity, along with risks related to these types of financings, is important when considering to use these financing vehicles.

- https://www.gfoa.org/issuing-taxable-debt
- https://www.gfoa.org/using-variable-rate-debt-instruments
- https://www.gfoa.org/bank-loans-and-direct-placement

11. Post Issuance Compliance for Federal Tax Purposes/Arbitrage. The IRS has NOT suspended the responsibilities that entities have to calculate federal arbitrage, yield restrictions, and adhere to private use regulations related to tax-exempt bond issuances.

- https://www.gfoa.org/post-issuance-policies-and-procedures
- https://www.gfoa.org/debt-101-volume-2-responsibilities-after-bond-issuance

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