
“Lame Duck” Congress May Take Up Modified Financial Transparency Rules.

Concerning proposals imposing strict financial reporting on governments may, in an amended form, be part of late-term congressional considerations on omnibus legislation.

The National Association of Counties (NACo) has offered a late-year update on the progress of newly proposed financial reporting rules that may prove burdensome and difficult for many local governments. The assessment is below – indicating that the proposal appears on target to become part of a large omnibus legislative package in December, but that some of the concerning specifics have been altered for the better.

From NACo:

> *On December 6, House and Senate Armed Services Committee leadership unveiled a bicameral, bipartisan Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA). The NDAA is annual, must-pass legislation that, in recent history, serves as a legislative vehicle for additional bipartisan, bicameral bills (or policy riders) so they can be enacted without receiving a standalone vote.*
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> *The FY 2023 NDAA agreement includes the Financial Data Transparency Act (FDTA), led by Reps. Carolyn Maloney (D-N.Y.) and Patrick McHenry (R-N.C.) in the U.S. House and Sens. Mark Warner (D-Va.) and Mike Crapo (R-Idaho) in the U.S. Senate. This bill was included as an amendment to the House Armed Services Committee's version of the NDAA that passed the U.S. House in July 2022. The bill would generally establish new financial data reporting standards for municipal securities market participants separate from the standards established by the Government Accounting Standards Board (GASB).*
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> ***NACo opposes federally imposed standards for county financial accounting and reporting and supports those principles put forth by the GASB.*** *As such, counties had several concerns with the bill as it was initially written. On September 29, NACo and the Public Finance Network (PFN), a coalition of municipal bond issuers, sent a letter to U.S. Senate leadership outlining these concerns, and NACo provided counties with a template letter to send to their members of Congress.*
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> *Additionally, we worked closely with our State Association partners to express these concerns to the bill sponsors in both the U.S. House and U.S. Senate and coordinated our efforts with a coalition of municipal advisors, counsel and underwriters to suggest alternate language. Suggested changes included moving the rulemaking away from MSRB, lengthening the rulemaking timeline to allow for input from issuers and market participants and/or creating a pilot program or study to better determine the impact these new standards would have on the municipal industry.*
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> ***We are pleased to report that several of these suggestions were incorporated***

into the final NDAA agreement.

The new language directs the Securities and Exchange Commission (SEC) to set and implement these new data standards instead of the MSRB. This language is more favorable since SEC already has regulatory authority and procedures and the commission is subject to congressional oversight. Further, this move doesn't expand MSRB's current authority to oversee state and local governments as bond issuers.

The section also includes new language specifically directing SEC to consult with market participants (such as counties) when drafting these standards and requires the SEC to scale these reporting standards for smaller regulated entities and work to ensure these rules cause minimum disruption.

Lastly, the new language does not prescribe a timeline for SEC to issue a proposed rule but does retain the requirement that there be two years to implement the rule. Not setting a definitive timeline for the rule to be drafted will allow the SEC to conduct meaningful consultation with counties and other municipal market participants and understand the impact these new data reporting standards will have on the municipal industry once implemented.

The bottom line: *While the provision included in the NDAA still represents a potential unfunded mandate and a federally imposed reporting standard, the changes made to the text will allow counties to work with SEC to address these concerns during the rulemaking process.*

National Association of Counties

by Michael Sanderson

December 8, 2022