

National Federation of Municipal Analysts

White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus



INTRODUCTION

The National Federation of Municipal Analysts (NFMA) believes that access to current, complete, and reliable information on material risks and events affecting a municipal issuer's ability to repay publicly issued debt is critical to municipal bond investors' ability to make informed investment decisions. This NFMA White Paper on Guidance & Insights (White Paper) provides guidance to state and local governments, other types of municipal issuers, and borrowers accessing funding in the municipal marketplace (collectively, Municipal Issuers) on disclosure items important to investors when a Municipal Issuer is facing an emergency situation that will have a material impact on its fiscal health and/or operational sustainability (Emergency Events). The Coronavirus Disease 2019 (COVID-19) crisis is such an Emergency Event. This NFMA White Paper is intended to cover primary market offering statements and voluntary secondary market disclosures arising during or in the aftermath of an Emergency Event. *While this White Paper focuses on COVID-19 disclosure matters, it is intended to act as a disclosure template for any future Emergency Events, such as large-scale tropical storms, disease outbreaks, fires, and significant weather damage, which may be short-term or long-term, and may be localized or cover all Municipal Issuers.*

This White Paper is intended to help to Municipal Issuers, underwriters, underwriter's counsel and disclosure counsel obtain insights into Emergency Event disclosure needed by municipal investors, and to help them craft appropriate offering statements and continuing disclosures for such Emergency Events, including disclosures in response to a joint statement issued by then Chair of the Securities & Exchange Commission (SEC) Jay Clayton and Rebecca Olsen, Director of the SEC's Office of Municipal Securities. The statement, entitled *The Importance of Disclosure for Our Municipal Market*, was published May 4, 2020 ([Joint Statement](#) excerpted here, in Appendix A). Voluntary disclosure in the current COVID-19 crisis or during other Emergency Events provides Municipal Issuers with an opportunity to communicate with municipal bond investors in uncertain times the unique challenges to operating and financial performance that are more appropriately disclosed directly by an issuer as opposed to alternative informational resources outside of the issuer's control, e.g., social media and the press. It is important to note that many of the disclosures discussed in this White Paper are already being made in the context of reports and/or information that Municipal Issuers are already making public as a part of their day-to-day activities. Voluntary disclosures, as discussed herein, allow for the contemporaneous dissemination of information to the entire market, and are therefore highly encouraged.

NFMA White Papers seek to promote increased dialogue with industry groups, regulators, and

other interested parties on important disclosure challenges facing Municipal Issuers (including underlying conduit borrowers). They offer timely and practical insights from NFMA’s municipal analytic community members on the importance of prompt and insightful disclosure affecting government credit and operational sustainability. The NFMA believes Municipal Issuers will ultimately benefit from following these disclosure recommendations by maintaining existing investor interest and attracting new investors for their municipal offerings. A larger investor base can provide tangible fiscal benefit to Municipal Issuers from improved technical demand for municipal offerings and consequent better market “pricing”.

Please note that this White Paper does not constitute legal advice to any participant in the municipal bond market, including, among others, bond issuers, obligors, broker-dealers, and/or law firms. The White Paper represents NFMA's recommended market disclosure practices based on our experience as municipal credit analysts and market participants but are not intended to constitute legal standards or create any form of minimum disclosure standards.

NFMA RECOMMENDED COVID-19 DISCLOSURE GUIDANCE & INSIGHTS

The NFMA prepared these COVID-19 Disclosure recommendations to better inform Municipal Issuers and the municipal sell-side on risk disclosures important to municipal investors following the release of the Joint Statement, the Government Finance Officers Association (GFOA) [COVID-19 Guidelines](#), the Governmental Accounting Standards Board (GASB) [Technical Bulletin No. 2020-1](#) (COVID-19 Disclosure), and the Disclosure Industry Workgroup (“DIG) paper entitled [General Continuing Disclosure For Municipal Securities Issuers Including Those Related to COVID-19 Financial Matters](#) (DIG COVID-19 Recommendations) dated August 2020. Even when incorporating relevant GFOA, GASB and DIG COVID-19 recommendations, the NFMA believes opportunities exist for more robust COVID-19 Emergency Event disclosure (both voluntary and items required by SEC Rule 15c2-12) and these are presented in this NFMA White Paper. When the effects of an Emergency Event like COVID-19 are viewed to have the potential for pervasive and challenging credit impacts on a Municipal Issuer, it is important for that Municipal Issuer to communicate challenges and resolutions to municipal investors as quickly and efficiently as circumstances warrant. This White Paper will help to identify the best format and content of such disclosures (voluntary or required by SEC Rule 15c2-12) by Municipal Issuers going forward needed to address the unique information needs of the municipal buy-side.

Three existing disclosure platforms enable Municipal Issuers to report on COVID-19 and other Emergency Events fiscal and operational challenges:

- (1) the GASB-required Management Discussion & Analysis (MD&A Disclosure) section of the year-end financial statements by Municipal Issuers;

- 2) the “subsequent events” note of the GASB financial statements (SEN Disclosure); and,
- (3) voluntary and SEC Rule 15c2-12 Electronic Municipal Market Access (EMMA) disclosures.

Of the three disclosure platforms, the NFMA recommends voluntary EMMA filings as the best method to rapidly communicate with municipal market participants about the fiscal and operational impacts of COVID-19. Unfortunately, the current SEC Rule 15c2-12 continuing disclosure requirements and typical indenture/loan/lease reporting requirements do not address comprehensive COVID-19 or other Emergency Event disclosures, except when the impacts contribute to a reportable covenant breach. Consequently, Municipal Issuers will need to utilize the voluntary reporting function of the EMMA system to best inform municipal investors, rating agencies, regulators, and the public on COVID-19 matters, and proactively file material COVID-19 disclosure documents on EMMA. For Municipal Issuers that also post on issuer investor relations sites, the NFMA suggests that EMMA filings include reference to such sites.

To address this Emergency Event from COVID-19, the NFMA recommends disclosing the following items, where “material”, using the MD&A Disclosures, SEN Disclosures, and EMMA disclosures:

- **Disclosure of Amended Budgets as a Result of COVID-19 Effects.** Where a state or local government has determined the need to amend its existing general budget in response to COVID-19 fiscal stresses, notice of the amended general budget should be disclosed to the municipal market via a voluntary EMMA disclosure (with a link to where the amended budget can be found).
- **Disclosure of Material Declines in Occupancy/Use of Residential, Commercial, or Government Buildings and/or Operations Supporting Municipal Financings.** The NFMA expects prompt voluntary EMMA disclosure whenever Municipal Issuers close or curtail operations of buildings or other financed assets (e.g., parking facilities, convention centers, hotels, student housing, affordable housing, etc.) which could reasonably result in the material disruption of revenue receipts or expense coverage challenges. On the same merits, the reopening of financed assets should similarly be subject to prompt voluntary disclosure on EMMA. Many states have ordered curtailments of commercial and personal activities in response to COVID-19, and these orders can change quickly as COVID-19 outbreaks change velocity and location within a state. Consequently, updates on state or local government COVID-19 activity curtailments should be a matter of voluntary EMMA disclosure on COVID-19 impacts.
- **Disclosure of Deterioration in Revenue Collections (Sales/Use Taxes, Hotel Occupancy Taxes, Property Taxes, Accounts Receivable, etc.).** Liquidity is at the heart of making debt and lease payments, so material expected or realized delay and/or declines in receipt of revenues pledged to debt service should be subject to voluntary EMMA

disclosure. This recommendation is supported by the liquidity concerns noted in the Joint Statement and may be simultaneously completed with the updated budget disclosure.

- **Disclosure of Cost-Cutting and Austerity Measures (Employee Layoffs, Employee Furloughs, etc.).** In concert with disclosure of shuttering government operations and/or buildings, the NFMA advocates for voluntary disclosure and estimated net cost savings of material austerity measures, such as employee furloughs, that impact future Municipal Issuer liquidity. In particular, with employee furloughs, state and local governments should provide the projected net cost savings, as they often pay unemployment insurance only after claims are made, ultimately reducing the total cost savings to the Municipal Issuer. Additionally, as an example of operational negative externalities, layoffs of health and sanitation workers can result in greater strain on local hospitals and COVID-19 disease infection rates. While helping to preserve needed liquidity and cash flow for Municipal Issuers, employee furloughs can put the delivery of critical government services at risk, pose health and safety risks to residents/businesses, and create litigation and insurance coverage risks. For that reason, the NFMA believes disclosure of material employee furloughs or layoffs is an appropriate Emergency Event disclosure.
- **Disclosure of Federal and State Grants and Loans.** When an Emergency Event occurs, getting out “good news” is as important as “bad news” for Municipal Issuers. Obtaining grants/loans of significant amount to help address the emergency event on hand can bolster a Municipal Issuer’s liquidity and create a calming effect on municipal investors worrying about upcoming municipal debt payments. The amount, nature and repayment terms of federal and state loans and grants should be reflected in the audited fiscal year end GASB financials and SEN Disclosure, but Municipal Issuers who will not be issuing their audited fiscal year end GASB financials imminently should proactively file a voluntary EMMA disclosure on these matters. This recommendation is supported by the Joint Statement.
- **Disclosure of Draws Upon Alternative Liquidity Sources/Addition of Supplemental Liquidity Sources.** While certain events like a draw upon a liquidity facility may require a 15c2-12 material event disclosure, the NFMA emphasizes the importance of providing both timely and robust voluntary disclosure on material liquidity stresses faced by a Municipal Issuer during an Emergency Event. When a Municipal Issuer makes an unscheduled draw upon a debt service reserve or other credit enhancement that is reflective of financial difficulties or acute liquidity pressures, notice of this event should be provided to the municipal market via a disclosure on EMMA. In the context of emergency events, any draws on liquidity resources should be reported in advance of annual disclosures. Similarly, if a Municipal Issuer establishes a new bank credit loan or establishes increased borrowing capacity from a financial institution, that should also be disclosed in advance of annual disclosures. Disclosures should include the lending banks, the amount borrowed or borrowing capacity established to manage liquidity pressures, each of which should be disclosed to the municipal market through a voluntary EMMA disclosure.

Further, any short-term borrowing undertaken to meet debt service obligations other than a draw upon a debt service reserve or other credit enhancement should be specifically disclosed via a voluntary EMMA disclosure. Though voluntary, the disclosures should be made on a timely basis, allowing the municipal market to appropriately evaluate the credit of the Municipal Issuer.

- **Disclosure of Material Delays in Financed Construction Projects.** The disruption caused by COVID-19 has impacted labor availability and delivery schedules resulting in additional costs and time not in the original construction budgets or completion timetables. Municipal Issuers should provide voluntary EMMA disclosure where such projects are materially delayed or over-budget.
- **Disclosure of Material Ridership, Passenger, and Vehicle Traffic Declines Supporting Municipal Financings.** Public health efforts to slow viral transmission rates have caused major reductions in population mobility. Municipal Issuers should provide voluntary EMMA disclosure where such transportation entities and/or projects are facing material declines in ridership, passengers, or vehicle traffic as a result of federal/state/local COVID-19 restrictions. Disclosure is particularly important with bond financing reliant on traffic revenues, such as in toll roads, airports, and other public transportation projects.
- **Disclosure of Rate/Tax/Service Charge Relief Granted by Municipal Issuers.** As the financial impacts of COVID-19 have challenged the fiscal health and solvency of ratepayers, taxpayers, and government service users (e.g., airlines, port users, toll road users, utility customers, etc.), Municipal Issuers reliant on these payments have sought to temporarily ease their customers' cost burdens by lowering, deferring, or even waiving some charges, taxes and service charges. For example, utility providers and airports have implemented rate relief programs, but often provide a general description without projected future revenue impacts. The NFMA recommends Municipal Issuers disclose a comprehensive profile of the rate/tax/service charge relief program(s) implemented including a brief description of the relief provided, its duration, the parties impacted, the source of any replacement for the relief if applicable (e.g., the CARES Act), and projected revenue loss and/or debt service coverage ratio impact.

The above examples of recommended Emergency Event Disclosure for COVID-19 are not intended to be exhaustive. In addition, it may be appropriate for Municipal Issuers to refer buy-side participants to an investor relations or emergency information link or on their government websites for further information on Emergency Events, and Municipal Issuers can provide a link in their EMMA disclosures to this website as a supplemental disclosure platform for Emergency Events. Municipal Issuers and their counsel/advisors should be proactive in informing municipal investors, regulators, rating agencies, and other market participants of material COVID-19-related events regardless of whether they fall within the above examples. Municipal Issuers should highlight positive events and positive changes in circumstances related to Emergency events and

not just dwell solely on negative disclosures. Such proactive disclosures will help build and retain investor confidence in a Municipal Issuer's bonds. It is appropriate for Municipal Issuers to involve their underwriters and counsel in framing the appropriate Emergency Event disclosures and assessing when a material event notice may be required under SEC Rule 15c2-12. For example, the entry into or use of a liquidity facility may be a material event under SEC Rule 15c2-12. Disclosure counsel can also assess the need for reasonable cautionary language if any forward-looking statements are needed to make the Emergency Event disclosure meaningful and responsive to the concerns of the buy-side.

Copyright 2021 National Federation of Municipal Analysts. All Rights Reserved.

NFMA constituent societies, individual members or their firms may not agree with all provisions in this white paper. The NFMA is not a regulatory agency and compliance with the white paper advanced herein does not constitute a "safe harbor" from any State or Federal rules and regulations. Nothing in this paper is to be construed as an offer or recommendation to buy or sell any security or class of securities.

APPENDIX A: JOINT STATEMENT ON COVID-19 DISCLOSURE

A public statement by then SEC Chair Jay Clayton and Rebecca Olsen, Director of the Office of Municipal Securities, on May 4, 2020 provided the municipal market with initial guidance on COVID-19 disclosures regarding the effects of the pandemic on government issuers ([Joint Statement](#)). Set forth below is an excerpt from the Joint Statement. Please consult the SEC website for full text of the statement.

“Disclosures should reflect the issuer’s assessment of this state of affairs and outlook and, in particular municipal issuers should provide information regarding: (1) their current operational and financial status, including decreases in revenues and delays in collection of revenues; (2) how their COVID-19 response including efforts to protect the health and well-being of residents and employees has impacted their operational and financial condition, including un-budgeted costs; and (3) how their operational and financial condition may change as efforts to fight COVID-19 evolve. In these circumstances, comparisons to historical information may be relatively less significant.

- Information Regarding Sources of Liquidity. A description of cash on hand, access to reserves or other funds (and to what extent such access is limited), access to liquidity facilities and whether current liquidity is expected to be adequate to fund essential services and make timely debt service payments. If not otherwise disclosed, we encourage municipal issuers to disclose the material terms of any liquidity facility the issuer has used or expects it may use.
- Information Regarding Availability of Federal, State and Local Aid. A description of available federal, state or local aid the issuer has sought or is planning to seek and the anticipated timing of such aid. In addition, if the municipal issuer has obtained any such aid, it should disclose the nature, amount, and other material terms of the aid if it materially affects or reasonably likely will materially affect its operational or financial condition.
- Reports Prepared for Other Governmental Purposes. Municipal issuers routinely prepare reports for governance purposes that may be significant sources of current information. As front-line responders, these reports could provide powerful insight into local, regional, and sector-specific strategies to fight and recover from COVID-19. Accordingly, municipal issuers should consider making these reports more readily accessible to investors.”¹

¹ Source: <https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04>