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SIFMA: States Can do More to Improve Muni Issuer Disclosure

By [Jack Casey](#)

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WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker-dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC ... then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker-dealers. SEC Rule 15c2-12 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check

that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

