

## Guidance to ICPAS for Act 463

**PURPOSE:** To inform independent certified public accountants (ICPAs) how Act 463 of the 2014 Legislative Session will affect their audits of local auditees in Louisiana.

**BACKGROUND:** Act 463 of the 2014 Legislative Session enacts Louisiana Revised Statute (R.S.) 39:1438, requiring issuers of municipal securities to comply with the continuing disclosure rules of the Securities and Exchange Commission (SEC).

Municipal securities are defined as any securities issued by a public entity (the state of Louisiana, its agencies, departments, boards, commissions, parishes, municipalities, school boards, special districts, special authorities, and any other political subdivision or other entity created by the foregoing) that are subject to continuing disclosure under the SEC Rule.

The referenced SEC Rule is codified in the Code of Federal Regulation, 17 CFR 240.15c2-12 (commonly referred to as Rule 15c2-12), together with all corresponding rules, updates, notices, and interpretations of the SEC and the Municipal Securities Rulemaking Board (MSRB), as may be amended from time to time. For further information on SEC Rule 15c2-12 as amended, see the SEC's website, or the continuing disclosure guide published on the website of the MSRB.

The requirements of the SEC Rule generally apply to all publicly offered bond issues (i.e. those sold to the public via an underwriter using an official statement), but not to private placement bond issues (i.e. those sold in a private sale to one or a few investors, such as a bank.) (Note: Generally, the Rule exempts issuers who offer municipal securities with an aggregate principal amount of \$1,000,000 or less. See the Rule for additional exemptions.)

The continuing disclosure requirements apply to "obligated persons" as defined in the SEC Rule. An obligated person is generally an entity which is responsible for the repayment of the bonds or has pledged its own revenues or assets to the repayment of the bonds. The obligated person may or may not be the issuer of the bonds (e.g. a conduit issuer which issues bonds on behalf of another entity). Therefore, entities other than the bond issuer may be an obligated person subject to continuing disclosure requirements.

The MSRB's Electronic Municipal Market Access (EMMA) website publicly displays continuing disclosures that are provided by municipal issuers, obligated persons, and other parties. A tutorial video for using EMMA may be found at: <http://www.msrb.org/msrb1/Training-Tutorials.asp?section=1&video=0>.

The official statement for a bond issue usually includes an appendix ("Form of Continuing Disclosure Agreement") which sets forth the specific continuing disclosure reporting obligations for the particular bond issue. The official statement for a bond issue may be obtained either through EMMA or the bond issue transcript on file with the public entity. An executed copy of the continuing disclosure agreement may also be found in the bond issue transcript.

**WHAT THE NEW LAW REQUIRES OF LOUISIANA LOCAL AUDITEES:** R.S. 39:1438.C. requires that public entities continuously maintain:

- A list of all Louisiana municipal securities for which the public entity is the issuer or an obligated person;
- A copy of all continuing disclosure agreements to which the public entity is a party; and
- If pursuant to a continuing disclosure agreement to which the public entity is a part, the public entity is responsible for filing notices of changes in bond ratings and a list of current ratings for such securities, if any.

All records required by R.S. 39:1438.C are subject to inspection by the public entity's auditor, whether the legislative auditor or ICPA.

**WHAT THE NEW LAW REQUIRES OF AUDITORS OF LOUISIANA LOCAL AUDITEES:** R.S. 39:1438.D. requires the public entity's auditor to:

- Review the public entity's compliance with the recordkeeping requirements of R.S. 39:1438.C.
- Review a sample of the public entity's filings on EMMA to determine if such filings are in compliance with the continuing disclosure agreements to which the public entity is a party.

The Legislative Auditor would expect to see a compliance finding in the report of any local auditee found to be in noncompliance with R.S. 39:1438.C.

**ICPAs should be mindful that if a local auditee they are auditing has bonded debt, the bond indenture may require the local auditee to provide for an annual audit, regardless of the amount of revenues the local auditee receives. For example, a local auditee that receives \$200,000 in revenues and other sources during its fiscal year is required by the audit law (R.S. 24:513) to provide for a review/attestation report. However, if that local auditee has bonded debt, and the bond indenture requires the local auditee to provide for an annual audit, the local auditee must provide for an audit to the Legislative Auditor, not a review/attestation report. So if a local auditee for which you are performing a compilation or review/attestation has bonded debt, look carefully at the bond indenture while engaging them, and engage for an audit if required.**

**MATTER OF URGENCY:** The SEC announced its Municipalities Continuing Disclosure Cooperation Initiative ("Initiative") to address violations in connection with certain representations about continuing disclosures in bond offering documents. The Initiative states that issuers should self-report by December 1, 2014 possible violations involving materially inaccurate statements relating to prior compliance with Continuing Disclosure Rule 15c2-12 in order to receive favorable settlement terms for such misstatements or omissions. Misstatements and/or omissions include " ... any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." Final offering documents that failed to disclose misstatements and/or omissions in the previous five years should be reported to the SEC under the initiative.

The local governments that you audit may or may not know about this initiative. If they, as issuers, have violations of Rule 15c2-12, they may be able to self-report and avoid penalties. Please notify your governments that have bonded debt.

For a comprehensive discussion of the Initiative, go to:

<http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>.

**ADDITIONAL INFORMATION:** The State Bond Commission has sent guidance out to municipalities, parish governments, law enforcement districts, school boards, and conduit issuers regarding the continuing disclosure requirements of the SEC rule, and the requirements of R.S. 39:1438. The GFOA also has information on its website relative to the continuing disclosure requirements of the SEC rule.

Additional information on Act 463/R.S. 39:1438 is available on the Legislative Auditor's website:

<http://www.lla.la.gov/audittools/continuingDisclosure-Act463/>

If you have any questions, please call Gayle Fransen at (225) 339-3874, Suzanne Elliott at (225) 339-3802, or Joy Irwin at (225) 339-3975.