

Initial Municipal Market Responses to Proposed Financial Data Transparency Act Joint Data Standards

Hawkins Update

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As we approach the end of 2024, the initial rulemaking deadline for regulations under the Financial Data Transparency Act of 2022 (the “FDTA”) [\[1\]](#) is looming. The FDTA and its anticipated implementation were generally discussed in our *Hawkins Advisories* dated [January 25, 2023](#) and [July 21, 2023](#). This *Regulatory Update* explores initial FDTA rulemaking, municipal market reaction to the proposed rules and the outlook for FDTA rulemaking.

FDTA Refresher

The FDTA requires implementation by the principal Financial Stability Oversight Council agencies (respectively, the “Council” and the “Covered Agencies”) [\[2\]](#) of joint data standards for financial information that they collect. The stated purposes of the legislation, as originally introduced in the Senate, included: (i) reducing the private sector’s regulatory compliance burden resulting from financial data submission requirements by establishing a harmonized financial reporting program; and (ii) enhancing transparency and accountability by causing financial information so reported to be electronically searchable and suitable for artificial intelligence applications. [\[3\]](#)

FDTA Statutory Parameters

The FDTA requires initial joint adoption of regulations establishing joint data standards applicable to financial entity data collection by the Covered Agencies and to data that they provide for Council purposes. The deadline for this initial action is December 23, 2024. [\[4\]](#) The joint data standards are to include common identifiers, including a common non-proprietary legal entity identifier that would be available to reporting entities on an open license basis (made available under a legal guarantee with no cost to the public or restriction on copying, publishing, distributing, transmitting, citing or adapting the data). [\[5\]](#) The FDTA further requires that the joint data standards, to the extent practicable, comply with a number of criteria, including that they:

- render data fully searchable and machine-readable;
- enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying information requirements, as appropriate;
- ensure that a data element or data asset that is collected to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata;
- be nonproprietary or made available under an open license;
- incorporate standards developed and maintained by voluntary consensus standards bodies; and
- use, be consistent with and implement applicable accounting and reporting principles. [\[6\]](#)

The FDTA also provides that the process of developing joint data standards include consultation with other federal entities with responsibility for federal data or data standards and that it promote interoperability of federal regulatory data among Council members. [\[7\]](#) The joint data standards’ effective date may be no more than two (2) years after their adoption. [\[8\]](#) The Comptroller General of the United States is to report to Congress by December 23, 2025 on the “feasibility, costs and potential benefits” of a establishing a “Federal Government-wide regulatory compliance standardization mechanism”

that would be similar to the international Standard Business Reporting model, but using FDTA-based information classifications. [\[9\]](#)

Each of the statutorily named Covered Agencies (collectively, the “Implementing Agencies”) and each registered national securities association is required to undertake separate rulemaking for their information collection activities. The SEC’s rulemaking charge extends to information submitted to the Municipal Securities Rulemaking Board (“MSRB”). These agency-specific implementing rules are to take effect within two years after the effective date of the joint data standards. Data standards established through such rulemaking by the SEC, which may be directly or indirectly applicable to the municipal market, [\[10\]](#) are required to incorporate and, to the extent feasible, to ensure compatibility with relevant joint data standards established in the initial rulemaking stage. [\[11\]](#) With respect to rulemaking that is applicable to MSRB submissions, the FDTA also directs the SEC to consult market participants [\[12\]](#) and expressly provides both that it: (i) may scale data reporting requirements to reduce unjustified burdens on smaller “regulated” entities; and (ii) shall seek to minimize disruptive changes to persons affected thereby. [\[13\]](#) In addition, the FDTA provides that nothing in its provisions addressing SEC implementation shall require the SEC or the MSRB to collect or make publicly available additional information under any provision of law amended thereby or referenced therein beyond information that was required under such a provision prior to its passage. [\[14\]](#) The FDTA also affirmatively provides that its provisions relative to municipal securities may not be construed to affect the operation of the “Tower Amendment”. [\[15\]](#)

Contextual Considerations for Proposed Rulemaking

This multi-agency rulemaking mandate is especially challenging because of the technical nature of the data science subject matter, which is not otherwise within the regulatory purview of any of the Implementing Agencies. Further, with the number of Implementing Agencies involved and the diverse nature of their existing substantive data reporting requirements, FDTA rulemaking will have to negotiate a variety of practical pitfalls to achieve interoperability goals in a manner that is practicable for each Implementing Agency and their regulated entities. Rapid ongoing changes in data collection and digital information practices suggest the possibility that data standard specifications that are based on current assessments of their capacity to assure that reported financial information is electronically searchable and suitable for interoperable artificial intelligence applications may become outdated after a relatively short period. Regulatory cost-benefit projection methodology may not fully capture the potential costs of repeated rounds of implementation and of assuring the continued utility of data collected under successive data standard regimens.

The Proposed Joint Data Standards

The Implementing Agencies released a Notice of Proposed Rulemaking to establish joint data standards on August 22, 2024 [\[16\]](#) (the “August 22, 2024 NPR”), with a comment period that ran through October 21, 2024 (the “Joint Data Standards Proposal”). As a Covered Agency that would be subject to the joint data standards, though not statutorily required to adopt separate implementing regulations, the CFTC joined in releasing the August 22, 2024 NPR in order to give interested parties regulated by it an opportunity to comment. [\[17\]](#) The August 22, 2024 NPR proposed a limited set of joint data standards as parameters for second stage Implementing Agency rulemaking. These included:

- (a) adoption of the Paperwork Reduction Act definition of the term “collection of information”; [\[18\]](#)
- (b) express incorporation of items (i) through (iv) of the statutorily specified criteria set forth above, subject to consideration by the Implementing Agencies of “applicability, feasibility, practicability, scaling, minimization of disruption to affected persons, and tailoring”, as specified by the FDTA; [\[19\]](#) and
- (c) adoption of the International Organization for Standardization (“ISO”) “17442--Financial Services—Legal Entity Identifier” (“LEI”) as the primary legal entity identifier [\[20\]](#) and of several more specific identifiers. [\[21\]](#)

The August 22, 2024 NPR indicated, however, that an Implementing Agency might determine to use a different identifier instead of, in addition to or in combination with one identified in the Joint Data Standards Proposal for second-stage

rulemaking purposes. [\[22\]](#) For financial instruments, the Joint Data Standards Proposal would approve the use of two identifiers: (i) the ISO 10962—Securities and related financial instruments—Classification of financial instruments (“CFI”); and (ii) the Object Management Group Financial Instrument Global Identifier (“FIGI”). The August 22, 2024 NPR clarified that the intent would be to permit Implementing Agencies to select one. [\[23\]](#) It also stated that reliance upon the broadly used Committee on Uniform Security Identification Procedures (“CUSIP”) and International Securities Identification Number (“ISIN”) identifiers for securities had been considered and been determined to be inconsistent with FDTA open license requirements. [\[24\]](#) The August 22, 2024 NPR also included findings addressing a wide variety of administrative law requirements applicable to one or more of the Implementing Agencies. These generally reflected an assumption that the cost and staffing requirement impacts of the Joint Data Standards Proposal would be borne exclusively by the Implementing Agencies.

Municipal Market Comments on the Proposed Joint Data Standards

About one quarter of the approximately 110 comments submitted to the SEC were from municipal market participants. These include comments from the Treasurers, or other state-level debt officials, in ten (10) States and from officials of several municipalities, as well as from a broad range of industry groups. [\[25\]](#)

Many of the comment letters expressed the view that the Joint Data Standards Proposal, as applied to municipal market disclosure, would violate the Tower Amendment, or the Constitutional and intergovernmental comity principles upon which those limitations and the mechanics of the SEC’s existing indirect regulation of municipal disclosure are based, or that they exceeded the scope of the FDTA provisions. GFOA [\[26\]](#) and NABL [\[27\]](#), among others, also raised a number of other technical issues relating to interpretation of the FDTA text, including whether the term “financial entity” was statutorily intended to include municipal issuers and whether the term “information submitted to the [MSRB]” was intended to be distinct from more general FDTA references to “collections of information” by Covered Agencies.

In addition, many comment letters expressed concerns with the costs of submitting municipal disclosure in a structured format, particularly as requirements might apply to smaller and less frequent borrowers and proposed consideration of a variety of measures to address this, as well as generally urging phased and tailored implementation of any such requirements. The Florida Division of Bond Finance [\[28\]](#) urged consideration of that State’s experience in attempting to require local governments to submit financial statements to it in a structured format, which led to its determination that it would be more efficient to accept such statements in a variety of non-structured formats for single point conversion. Similarly, the GFOA Comment Letter suggested consideration of SEC reliance upon third party data broker extraction and conversion of municipal disclosure submitted to the MSRB in unstructured formats to meet market demand. Many stressed the need for rulemaking affecting municipal market disclosure to be informed by robust cost-benefit analysis that takes into account the extraordinary diversity among municipal issuers in staff and budgetary resources, technical sophistication, accounting and other legal requirements and size and frequency of their debt issuance. The potential involvement of other governmental and private financing participants, such as conduit borrowers, in an issuer’s financings raises additional concerns, including licensing issues and the possibility that such participants might otherwise be subject to different FDTA requirements or not be subject to such requirements at all. Several letters, including those submitted by GFOA and NAST [\[29\]](#) raised the possibility that ongoing technology advances may result in multiple rounds of implementation costs or materially reduce the benefits of submitting or collecting information in a structured format. Separately, several letters raised the possibility of municipal issuers and private conduit borrowers responding to increased public market compliance costs by raising capital in less regulated markets.

The comment letters reflect a broad consensus in favor of continued reliance upon CUSIP for security-specific identification. Many comment letters expressed support for continued reliance upon CUSIP as the sole or a principal operational municipal market identifier based upon its pervasive and longstanding use in connection with municipal bond issuance, marketing, secondary market trading and administration and for regulatory and accounting purposes. This consensus among municipal market commentators was consonant with broader market commentary. [\[30\]](#) Some of these letters also stated concerns with the direct and indirect costs and with the potential market disruption that might result

from replacement of CUSIP for these purposes. The NAST Comment Letter proposed that any mandated use of FIGI be applicable only with respect to new issues. However, several other letters noted that secondary market pricing inefficiency and market bifurcation might result from an adoption of FIGI as a municipal bond identifier on only a prospective basis.

Contextual Considerations for Final Rulemaking

FDTA implementation is proceeding in the context of reduced certainty as to the outcome of judicial review of federal administrative rulemaking due to several recent Supreme Court cases. The recent *Loper Bright* decision, [\[31\]](#) which signaled the Court's abandonment of the *Chevron* doctrine that for decades had required federal courts to defer generally to reasonable statutory interpretations by federal agencies, may result in a substantial increase in *de novo* review of those interpretations by federal courts. These decisions were discussed generally in our August 22, 2024 [Hawkins Advisory](#). The impacts of these cases, of further Supreme Court doctrinal developments and of responsive actions by lower courts, administrative agencies and Congress upon the federal administrative rulemaking process cannot be predicted with confidence at this time. This may encourage persons affected by FDTA implementation to challenge it on a statutory or regulatory process basis.

The January commencement of a new presidential administration and Congress, and the attendant changes in federal agency policies and staffing, may well affect FDTA implementation in unpredictable ways. While substantial changes in the leadership and priorities of the Implementing Agencies seem likely, the SEC's policy direction is particularly difficult to predict at this time. SEC Chair Gensler has announced that he would resign, effective January 20, 2025, rather than finishing his term ending June 5, 2026, [\[32\]](#) and Commissioner Lizarraga has announced that he would resign, effective January 17, 2025, rather than finishing his term ending June 5, 2027. [\[33\]](#) Because Commissioner Crenshaw is currently serving in a carryover period after the expiration of her term and Commissioner Peirce's term is scheduled to end June 5, 2025, as many as four of the SEC's five Commissioners, including its Chair, may be reappointed or replaced early in the next Congressional session. [\[34\]](#)

Congressional Review Act ("CRA") consideration of joint data standard regulations would be exercised by the next Congress (the 119th Congress) and, given the two-year time frame provided for adoption of agency-specific implementing regulations based upon the joint data standards, CRA consideration of the implementing regulations might well be by the following Congress (the 120th Congress). [\[35\]](#)

Conclusion

The FDTA imposed a complex and challenging two-stage regulatory implementation mandate that by its nature requires coordination by an unusually large number of federal agencies. The Implementing Agencies are attempting to discharge this mandate in a policy and legal context that heightens the uncertainty that is intrinsic to the rulemaking process. While these considerations may well affect the pace and content of implementation, they should not be expected to relieve the Implementing Agencies from proceeding with FDTA implementation absent an amendment or repeal of the statute. Municipal market comments to the August 22, 2024 NPR identified a number of substantial risks and costs that may result from implementation of the currently proposed joint data standards. It would be prudent for municipal market participants to prepare to engage in any further joint data standard and second stage SEC and MSRB rulemaking to assure that any requirements that are imposed on the municipal market address these concerns.

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Footnotes:

[1] P. L. 117-263, Div. E, Title LVIII, 136 Stat. 3421, 15 USCS § 78 nt. The FDTA amended Title I, Subtitle A of the Financial Stability Act of 2010 (12 U.S.C. 5321 *et. seq.*) and various financial regulatory statutes, including, with respect to municipal securities, the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. 78d *et. seq.*).

[2] The Council currently includes: (i) the respective heads of each of the Commodity Futures Trading Commission (the “CFTC”), Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Board of Governors of the Federal Reserve System, National Credit Union Administration, Securities and Exchange Commission (the “SEC”) and Department of the Treasury as voting members, along with a presidential appointee with insurance expertise; and (ii) the Directors of the federal Office of Financial Research and Federal Insurance Office and designees for each of the state banking supervisors, state insurance commissioners and state securities commissioners as non-voting members. 12 U.S.C. 5321(b). The FDTA defines the term “covered agencies” to include each voting *ex officio* Council member’s agency, with the exception of the CFTC, along with any “primary financial regulatory agency” designated by the Secretary of the Treasury 12 U.S.C. 5334(a)(1), added by FDTA, P.L. 117-263, Div. E, Title LVIII, Subtitle A, § 5811(a), 136 Stat. 4322. The CFTC was so designated on May 3, 2024. [Commodity Futures Trading Commission, CFTC Approves a Joint Rule Proposal to Establish Technical Data Reporting Standards, Release Number 8940-24](#), (August 8, 2024).

[3] The statement was included in the prefatory language to The Financial Data Transparency Act of 2022 as introduced in the Senate ([S. 4295, 117th Cong. \(2022\)](#)). The text of the Senate bill was incorporated with certain changes into the H.R.7776 - [James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 P.L. 117-263](#).

[4] 12 U.S.C. 5334(b)(1), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle A, § 5811(a), 136 Stat. 4322.

[5] 12 U.S.C. 5334(c)(1)(A), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle A, § 5811(a), 136 Stat. 4322. The FDTA defines the terms “machine-readable”, “metadata” and “open license” by reference to the definitions of such terms for purposes of the Paperwork Reduction Act (44 U.S.C. 3502).

[6] 12 U.S.C. 5334(c)(1)(B), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle A, § 5811(a), 136 Stat. 4322.

[7] 12 U.S.C. 5334(c)(2), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle A, § 5811(a), 136 Stat. 4322.

[8] 12 U.S.C. 5334(d), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle A, § 5811(a), 136 Stat. 3422.

[9] FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle I, § 5893, 136 Stat. 3439.

[10] The FDTA separately addresses “asset-backed securities”, as defined by 15 U.S.C. 78c (a)(79), and it seems possible that certain issues of securities by municipal issuers that are exempt from SEC registration requirements may nonetheless be subject to certain limited post-issuance filing requirements as asset-backed securities for purposes of the Exchange Act. 15 U.S.C. 77g(c)(3), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle B, § 5821(d), 136 Stat. 3424. See footnote 13 herein.

[11] 15 U.S.C. 78o-4(b)(8)(B), added by FDTA, P.L. 117-263, Div. E, Title LVIII, Subtitle B, § 5823(a), 136 Stat. 3427 and 15 U.S.C. 77g(c)(3)(B), added by FDTA Section 5821(d).

[12] 15 U.S.C. 78o-4(b)(8)(C), added by FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle B, § 5823(d), 136 Stat. 3428.

[13] FDTA Section 5823(b)(2). Although municipal issuers are not directly regulated by the MSRB (or regulated by the SEC, except as issuers of certain asset-backed securities that may be subject to Exchange Act reporting requirements relative to loan repurchase demands to which 15 U.S.C. 78o-7 applies), it seems probable that the statutory intent with respect to reducing the burden of data standards upon smaller entities was intended to extend, for purposes of municipal

market disclosure, to municipal issuers as the persons who would inevitably be most affected by the burden of producing any disclosure information subject to such requirements. See footnote 10 herein.

[14] FDTA P.L. 117-263, Div. E, Title LVIII, Subtitle B, § 5826, 136 Stat. 3430, 15 U.S.C. 77g.

[15] 15 U.S.C. 78o-4(d)(1) and 15 U.S.C. 78o-4(d)(2). These provisions were added to the Exchange Act in 1975 in conjunction with the establishment of the MSRB and generally: (i) prohibit both the SEC and the MSRB from directly or indirectly requiring any municipal securities issuer to make any pre-issuance filing of an application, report or document in connection with such securities; and (ii) further prohibit the MSRB from directly or indirectly requiring such an issuer to furnish any application, report, document or other information with respect to such issuer to the MSRB or to actual or prospective purchasers.

[16] Notice of Proposed Rulemaking, 89 Fed. Reg. 67890 (August 22, 2024).

[17] See footnote 2 herein.

[18] 44 U.S.C. 3501 *et. seq.*

[19] 89 Fed. Reg. 67890, 67905 (August 22, 2024).

[20] The ISO LEI is formatted as a 20-character, alphanumeric code that is managed by the Global Legal Entity Identifier Foundation, which was established by the Financial Stability Board, a Swiss non-profit entity. Separate common identifiers were proposed for swaps and security-based swaps, other financial instruments, dates, “states, possessions or military ‘states’ of the United States” and other countries and their subdivisions. 89 Fed. Reg. 67890, 67896 (August 22, 2024).

[21] Separate common identifiers were proposed for swaps and other financial instruments, dates, “states, possessions or military ‘states’ of the United States” and other countries and their subdivisions. 89 Fed. Reg. 67890, 67907 (August 22, 2024).

[22] 89 Fed. Reg. 67890, 67895, ft. nt. 20 (August 22, 2024).

[23] 89 Fed. Reg. 67890, 67897, ft. nt. 44 (August 22, 2024).

[24] 89 Fed. Reg. 67890, 67897 (August 22, 2024).

[25] Including comment letters addressing municipal market issues from the American Securities Association, the Bond Dealers of America, the Government Finance Officers Association (“GFOA”), the Investment Company Institute, the National Association of Bond Lawyers (“NABL”), the National Association of Municipal Advisors, the National Association of State Treasurers (“NAST”), the National Federation of Municipal Analysts, the Public Finance Network and the Securities Industry and Financial Markets Association as well as several sector specific groups. Hawkins attorneys participated in the drafting of the NABL and NAST comment letters ([Carol Juang McCoog](#) and [Kenneth Roberts](#), respectively).

[26] Comment Letter of the Government Finance Officers Association (Oct. 21, 2024) (the “GFOA Comment Letter”).

[27] Comment Letter of the National Association of Bond Lawyers (Oct. 21, 2024) (the “NABL Comment Letter”).

[28] Comment Letter of the Florida Division of Bond Finance (Oct. 21, 2024).

[29] Comment Letter of the National Association of State Treasurers (Oct. 20, 2024) (the “NAST Comment Letter”).

[30] The American Bankers Association submitted a supplemental comment letter for the purpose of compiling financial market participant comment letter support for continued use of its CUSIP financial instrument identification system, which quoted, among others, the GFOA Comment Letter, a comment letter submitted by the National Association of Health and Educational Facilities Financing Authorities, the NABL Comment Letter and the NAST Comment Letter. Comment Letter of the American Bankers Association (Nov. 25, 2024).

[31] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2248 (2024) (“*Loper Bright*”).

[32] U.S. Securities and Exchange Commission, *SEC Chair Gensler to Depart Agency on January 20*, [Release 2024-182](#), (Nov. 21, 2024). President-elect Trump announced on December 4, 2024 his intent to appoint former SEC Commissioner Paul S. Atkins to a new term as Chair of the SEC. Lawrence Delevingne and Douglas Gillison, [Trump picks former SEC commissioner Paul Atkins to run agency](#), Reuters, (Dec. 4, 2024 5:31 PM).

[33] U.S. Securities and Exchange Commission Statement [Commissioner Lizarraaga Statement on His Planned Departure from the Commission](#) (Nov. 22, 2024).

[34] *SEC Commissioners*, [U.S. Securities and Exchange Commission](#), (last visited Dec 4, 2024).

[35] 5 U.S.C. 801 *et. seq.* The timing mechanics for Congressional disapproval resolutions under the CRA are complicated and cannot be predicted in advance with certainty. This is especially true of regulations that are promulgated during the final months of a Congress, which are reviewed by the next Congress. See Congressional Research Service, CRS Report IF10023, [The Congressional Review Act \(CRA\): A Brief Overview](#). As noted in our August 22, 2024 [Hawkins Advisory](#) (at footnotes 20-21), it seems possible that Congress may consider modifying its administrative rulemaking oversight procedures in response to the recent Supreme Court rulings discussed there.

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