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Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
Attention: CC:PA:LPD:PR

RE: REG-129067-15, Proposed Rulemaking – Definition of Political Subdivision

The Government Finance Officers Association of the United States and Canada (GFOA) appreciates the opportunity to respond to the Proposed Regulations related to the definition of political subdivision for tax-exempt bond qualification purposes. GFOA represents over 18,000 members across the United States, many of whom work for governments and political subdivisions that issue tax-exempt bonds. As many of our members are finance officers of these authorities, we are deeply concerned about the impact the Proposed Regulation could have on the public benefit provision by these political subdivisions which include transportation and airport authorities, utility providers and public housing.

The size and scope of public service delivery provided by political subdivisions in the country is vast. There are 38,572 special districts according to the 2012 US Census of Governments; each special district is created and organized to provide a specific public purpose. Together, special districts, agencies, and authorities in the U.S. encompass a wide variety of purposes such as economic development, public transportation, airports, corrections, highways, housing, roads, schools, water sewer, parking and ports. These entities serve a purpose that is in the best interest of the particular State by which they are created and whose governing body has approved their existence. Additionally, in many cases they are intentionally designed to reach across multiple jurisdictions in order to create service delivery efficiencies directly to citizens. To help fulfill their purpose, they have the ability to issue tax-exempt debt, and in 2015, State and local authorities issued \$177 billion in bonds, nearly half of all \$404 billion bonds issued last year (Thompson Reuters).

The Proposed Regulations set forth a new, three-part federal test to define political subdivisions qualified to issue tax-exempt debt. Every entity would have to meet all three tests to be considered a political subdivision. The entity must: (1) have right to exercise a substantial amount of at least one of three sovereign powers (the power of eminent domain, power of taxation and the police power); (2) serve a governmental purpose; and (3) be controlled by a state or local government. The detailed requirements applicable to these three tests under the Proposed Regulations make them unworkable.

The GFOA objects to the Proposed Regulations due to the far-reaching scope and negative impact to political subdivisions across the U.S. The Proposed Regulations add extensive and additional federal requirements on top of the existing State powers requirement. The Proposed Regulations impact not only the ability to issue future tax-exempt bonds that would consequently weaken our country's aging infrastructure, but by changing the definition requirements, the Proposed Regulations also impact outstanding bonds long after they were issued by political subdivisions. Political subdivisions may be subject to remedial action that would be costly to the communities they serve and subject outstanding bonds to a taxable status after the proposed transition period expires.

While the Proposed Regulations make clear that the intent of the rule is to adopt safeguards to prevent potential abuses, the application of the Proposed Regulations would have an overreaching effect for all political subdivisions that are well established, formed under State law and presently providing significant public benefit. GFOA respectfully opposes the Proposed Regulations and asks that they be **withdrawn and rewritten in order to directly address the specific types of abuses the IRS believes to exist.**

Our comments on various aspects of the proposed rule are discussed below.

Governmental Purpose: The Proposed Regulations require that a political subdivision serve a governmental purpose. A governmental purpose requires, among other things that the purpose for which the entity was created, as set out in enabling State legislation, be a public purpose and that the entity continually serve that purpose.

While GFOA appreciates the intent of defining a political subdivision's governmental purpose, it is a redundant condition. The determination of a subdivision's governmental purpose is made during the consideration of State legislation that authorizes the creation of the political subdivision. The political subdivision that does not serve the purpose of the authorizing legislation is operating ostensibly against the law of that State, which is a governing matter of the State, not the United States Treasury.

Additionally, the Proposed Regulations require that the "entity operates in a manner that provides a *significant public benefit with no more than incidental benefit to private persons.*" This is especially problematic without at the very least, further clarification. GFOA is concerned about an adverse impact to those entities that clearly serve the public but also provide service to private businesses (who also are members of the public). Examples include conduit financing for public health care facilities/assisted care/nursing homes and sewer/water treatment authorities that not only serve the public, but also provide a benefit to private business. Every political subdivision that may provide service to benefit a private entity or person would have to be examined to determine if such benefit is "incidental."

Governmental Control: The Proposed Regulation states that an entity is not a political subdivision unless it satisfies the governmental control requirement by having control vested in either (a) a State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or its duly authorized elected or appointed officials in the official capacities, or (b) an electorate established under applicable State or local law of general application, provided the electorate is not a private faction.

GFOA is concerned that the first listed control requirement is singular: "a State or local government". Often by their very nature, political subdivisions reach across multiple jurisdictions because of infrastructure that crosses these jurisdictions such as roadways of toll agencies, commuter rail lines of transportation authorities, or the water/sewer pipelines of utility authorities. These entities were created to serve a specific public purpose which include service delivery efficiencies and to ensure that all citizens have access to these services. If multiple state or local governments appoint members to an entity's governing body, no singular state or local governing body possesses the requisite sovereign powers or control as outlined in the Proposed Regulation.

Also alarming are the benchmarks that constitute control, specifically the right or power both to approve and to remove a majority of a political subdivision's governing body. Many state or local governments retain only the ability to remove "for cause", which may not be sufficient control under the Proposed Regulations. GFOA is also concerned about the conditions placed on the composition of a governing board. Many governing boards currently include both private and public sector members, as authorized and structured under State statute. The rule would necessitate legislative changes to these boards in order for the entity to function and access the tax-exempt bond market. Such consequences of the Proposed

Regulations, whether direct or indirect, are an overreach by the federal government into the affairs that are the domain of the state.

For the reasons outlined above, GFOA objects to the Proposed Regulations due to the far-reaching scope and potential impact to political subdivisions across the US. If the IRS and Treasury are concerned with new development districts as political subdivisions or perceived abuses within current districts as they relate to tax-exempt bond issuances, the IRS should more carefully develop parameters to combat these real areas of concern rather than completely disrupt states' rights to create these entities, and create roadblocks that would hinder the ability for the political subdivisions to effectively, efficiently and economically serve communities.

Sincerely,

A handwritten signature in black ink that reads "Emily S. Brock". The signature is written in a cursive, flowing style.

Emily S. Brock
Director, Federal Liaison Center