Public Hearing on Proposed Regulations
REG-129067-15: Proposed rulemaking – *Definition of Political Subdivisions for Tax-Exempt Bonds*

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Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC

Good morning, my name is Pat McCoy and I am here today representing the Government Finance Officers Association of the United States (or GFOA). I also serve as the Director of Finance for the Metropolitan Transportation Authority in New York City, a political subdivision of the state of New York. The MTA subway, bus and commuter rail systems provide 2.69 billion trips each year, and MTA bridges and tunnels carry more than 280 million vehicles each year. The MTA Group's capital needs are enormous and are funded through a variety of sources, including proceeds of tax-exempt bonds – the MTA currently has over $37 billion of tax exempt bonds outstanding. GFOA represents over 18,000 public finance officers from State and local governments, schools and special districts throughout the United States. Since 1906, GFOA has enhanced the professional management of governmental financial resources by advancing fiscal strategies, policies and practices for the public benefit. On behalf of the GFOA and its 18,000 members, many of whom work for political subdivisions that issue municipal securities like the MTA, I appreciate the opportunity to provide comments at this public hearing on the proposed rulemaking regarding the definition of political subdivisions for purposes of issuing tax-exempt bonds.

The size and scope of public service delivery provided by political subdivisions in the country is immense. Each special district is created and organized to provide a specific public purpose. The MTA operates the country's largest public transportation network. But taken together, special districts, agencies and authorities in the US encompass a considerable variety of public purposes such as airports, corrections

facilities, highways, housing, roads, schools, economic development, water, sewer, parking and ports. Many of these districts are designed intentionally to reach across multiple jurisdictions in order to create service delivery efficiencies directly to citizens.

The requirement to possess a substantial amount of one of the three sovereign powers has been a requirement under applicable court decisions and IRS regulations and rulings for years. We believe this is the appropriate test for determining status as a political subdivision for this purpose.

The new, three-part test of the proposed regulations, is overly restrictive. As we see it, these proposed regulations question the legitimacy and authority of bodies who enacted the enabling legislation that created the political subdivisions in the first place. Taken together, the additional requirements of the Treasury's proposed rule attempt to regulate governing matters that, in the absence of abuse, should be left to the States as has been the case for decades.

However, I want to be clear that we recognize the original intent that led to the issuance of the proposed rule. We understand that the rule is motivated for the laudable goal of creating safeguards to prevent potential abuses stemming from certain entities that are not sufficiently "governmental." Unfortunately, the proposed rule as written has such a broad scope that we remain concerned that political subdivisions that are legitimately created and presently provide essential public services will be unnecessarily impacted. We respectfully request that the proposed regulations be withdrawn and rewritten in a narrower, more targeted manner to directly address the specific types of abuses the IRS believes to exist. GFOA and the MTA would be happy to assist in that effort.

As it is written, the proposed requirements raise concern that many entities would either no longer qualify as political subdivisions or that their status would be unclear. Although I would like to describe three core concerns of GFOA members, these are intended as important illustrations of the need to fundamentally revise the proposed regulations.

First, in determining whether the required governmental purpose exists, the proposed regulations look at "whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit." There is little clarity on the meaning of "significant public benefit" and "incidental private benefit." Further, this requirement suggests a dramatic narrowing of the types of permitted public purposes that governmental entities have served with long-standing IRS approval and the addition of a new, more restrictive version of the private activity bond test. Members of GFOA are concerned about an adverse impact to those entities that clearly serve the public but also provide service to private businesses – who are also members of the public. Every political subdivision that may provide service to a private entity or person would have to be examined to determine if such benefit is "incidental" and if the subdivision provides a "significant public benefit" from the perspective of the IRS. We are concerned that this undefined requisite adds an unnecessary layer of IRS input into permitted State and local activities, and a level of complexity and uncertainty. These limitations and resulting uncertainty translate to risk, which in turn may increase interest costs to issuers. We urge that you strike the language altogether.

Second, the requirement that sovereign powers be conveyed through a law of "general application" is problematic. Many political subdivisions, the MTA included, are governed by statutory provisions specific to the political subdivision. As it is written, there is ambiguity whether these statutory provisions will be considered a law of general application. This requirement should either be deleted entirely or clarified to specify that it can be satisfied by a law that applies only to a specific entity or entities.

Our concerns regarding the new governmental control requirement reflects, once again, the very nature of Political Subdivisions – that they are created for specific public purposes by each State. I would like to emphasize again that the policymakers of each State who determined the public purpose of the entity also considered governing board composition appropriately for its public purpose. **It is simply not possible to construct a one size fits all definition of what constitutes acceptable governmental control. That sort of effort will leave an enormous number of entities uncertain as to their status and exposed to the risk of the IRS determining that they are insufficiently controlled.**

Another difficulty with the governmental control test is that the proposed regulations speak in terms of control by "a" governmental unit. It is unnecessary for a governmental unit to control a majority of the governing body of the political subdivision if the political subdivision is intended to reflect the interests of multiple governmental units. In the case of the MTA group service area, such recognition is essential due to the interconnectedness and overlapping nature of the multiple jurisdictions being served. Many political subdivisions act for the benefit of, or jointly for, multiple political subdivisions. We respectfully request clarification that this aspect of the proposed regulation can be satisfied if multiple government entities approve members of the board and no single governmental unit controls a majority of such members. In addition, the proposed regulations indicate control is exercised through a power to both

approve and remove a majority of the governing body on a “discretionary and non-ministerial basis”. Members of the MTA’s board may be removed only for cause. We heard the same sentiment from many of GFOA’s members. Therefore, we request that this language is deleted from the proposed regulations. Again, these issues reflect that the governmental control test is unworkable as written and the difficulty in crafting specific tests that will work for thousands of existing entities.

In conclusion, the GFOA urges IRS and Treasury staff to withdraw and re-propose a new version of the regulations that takes into account its potential impact to political subdivisions across the United States – thousands of subdivisions that are well established, formed under State law and presently providing significant public benefit. A new regulation should be proposed that is focused on the types of entities that were the genesis for the issuance of the proposed rules. With this, I conclude my remarks and look forward to continuing the discussion. I thank you again for the opportunity to testify and I am happy to answer any questions that you may have.