

Muni Bond Newsletter

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NEW FEDERAL GIFT RESTRICTIONS ON MUNICIPAL ADVISORS

The SEC has extended MSRB Rule G-20 to municipal advisors (MAs). The rule prohibits MAs from giving or providing or permitting to be given anything or service of value in excess of \$100, if such gift can be in any way viewed as related to obtaining or retaining business from a municipality or other public entity. The rule is purposefully written to be very broad and was crafted to address all forms of “pay to play/commercial bribery” between MAs and municipalities.

Some of the breadth of the rule includes provisions:

- ◇ Restricting not only direct but indirect gifts;
- ◇ Requiring that gifts must be valued at the higher of cost or market value, exclusive of tax and delivery charges;
- ◇ Including gifts not only to recipient municipalities, but their employees, agents and representatives; and
- ◇ Requiring an aggregation provision to limit multiple gifts.

The valuation provision requires that when valuing tickets for sporting or other entertainment events, the MA must use the higher of cost or face value. The aggregation provision requires the MA to aggregate all gifts given by it (and all MA employees) over the course of a year.

There are some exclusions, including occasional gifts of meals, sponsoring business functions that are recognized by the IRS as deductible business expenses, pens, notepads, and other gifts of *de minimis* value. There is also an exclusion for bereavement gifts.

The rule requires MAs to keep extensive records for all gifts. Recordkeeping alone may be one of the main deterrents to MAs providing gifts.

Municipalities and their employees should be aware of the gift restrictions on MAs and themselves as recipients of such gifts. Though this rule imposes federal restrictions on MA’s, there are often additional and similar state law restrictions on municipal employees.

