Municipal Advisor Registration Rule

ISSUE

The Dodd-Frank Wall Street Reform and Consumer Protection Act regulates individuals and firms that provide financial advice to municipal entities. ACEC urges the SEC to provide additional clarification so that traditional engineering services are not inadvertently treated as municipal advisory services.

OVERVIEW

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act. The law is designed to improve oversight and regulation of the nation’s financial and mortgage markets, and to increase consumer protections.

Section 975 of the Dodd-Frank Act requires “municipal advisors” to register with the Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB). This provision was designed to regulate activities that are believed to be responsible for municipal bankruptcies and other problems in the municipal securities markets prior to the law’s enactment. Registration with the SEC and MSRB makes a firm subject to examination, and requires compliance with a series of regulations, recordkeeping, and payment of prescribed fees.

The law defines municipal advisor as a person or firm that provides advice to a municipal entity regarding municipal financial products or the issuance of municipal securities, including advice with respect to structure, timing and terms. Section 975 includes an exemption from registration for “engineers providing engineering advice.” The SEC was tasked by Congress with defining which services fall under the engineering exemption.

On September 18, 2013, the SEC approved its final municipal advisor registration rule, which took effect on July 1, 2014. The engineering exemption was clarified to include cash-flow modeling and feasibility studies on the engineering aspects of a project. In addition, the final rule created several new exemptions from registration that can be used by engineering firms and other professionals. These include exemptions for responding to an RFP/RFQ, for providing general information that is not tailored to a particular client, and for certain circumstances in which the municipal client has also hired an independent registered municipal advisor.

The MSRB has finalized several rules that also govern the activities of registered municipal advisors: fiduciary duty responsibilities; supervisory requirements; restrictions on gifts; professional qualifications exam; and limits on political contributions for registered municipal advisory firms and designated employees.