

**Testimony of the Honorable James E. Geringer,  
Board Chair of Association of Governing Boards of  
Universities and Colleges**

**House Committee on Financial Services  
Subcommittee on Capital Markets and  
Government Sponsored Entities  
July 20, 2012**

Chairman Garrett, Ranking Member Waters, Members of the Subcommittee on Capital Markets and Government Sponsored Entities, I thank you for granting me the privilege of testifying before your Subcommittee in this timely and important hearing regarding H.R. 2827, which clarifies provisions of the Dodd-Frank Act concerning the registration of municipal advisors.

I am testifying today in my position as Chair of the Board of Directors of the Association of Governing Boards of Universities and Colleges. AGB is the only national association that serves the interests and needs of all academic governing boards, boards of institutionally related foundations, and campus CEOs and other senior-level campus administrators on issues related to higher education governance and leadership. We serve more than 40,000 individuals at over 1,900 colleges, universities, and affiliated organizations.

I also serve as Chair of the Board of Trustees of Western Governors University, and have had the honor of serving two terms as Governor of the State of Wyoming.

H.R. 2827 addresses an issue that has been of great concern to colleges and universities over the last year and a half, relating to the implementation of certain provisions of the Dodd-Frank Act relating to persons acting as municipal advisors. The Dodd-Frank Act created a new regulatory regime for municipal advisors, including a requirement that municipal advisors register with the SEC. In January of 2011, the SEC issued proposed rules defining the term "municipal advisor" for purposes of these provisions.

Unlike corporate directors, trustees of public and non-profit colleges and universities are not compensated for their board service. They are unpaid volunteers who devote their time, experience, and talent to serving the public interest. In total, approximately 50,000 men and women serve as volunteer trustees of public and private colleges and universities in the United States. An additional

45,000 volunteers serve on the boards of institutionally related foundations, which are private charitable organizations that raise and manage funds for public colleges and universities. The service of these individuals protects institutional independence and autonomy and is essential to effective governance.

Although we commend the SEC for clarifying in the proposed rules that elected board members of municipal entities, including elected trustees of public colleges and universities, will not be required to register as municipal advisors, we have been concerned that the proposed definition of "municipal advisor" could be construed to include appointed trustees of public universities, trustees of private non-profit universities, and trustees of institutionally related foundations, who are not explicitly exempted from the registration requirement. Trustees who discuss municipal financial products at board meetings and authorize institutional participation in municipal securities offerings could mistakenly be viewed as providing "advice" (a term neither the Dodd-Frank Act nor the proposed rule defines) to an "obligated person" and thus become subject to regulation as municipal advisors.

We support the goals of the Dodd-Frank Act and the SEC of ensuring appropriate oversight of advisors to municipal entities and conduit borrowers. However, it is imperative that the quality of institutional governance not be compromised by counterproductive, needless, burdensome, and off-putting regulation of trustees acting in their fiduciary capacity. Such a result would conflict with Congressional intent and interfere with trustees' fiduciary responsibilities. It would also significantly hinder the ability of public and private colleges and universities to attract and retain highly qualified trustees with financial expertise, to the detriment of these institutions, their students and faculty, and the nation.

To regulate trustees as municipal advisors is to misunderstand profoundly their role and legal status. The board of trustees of a university is a governing body, not an advisor. The difference between, on the one hand, the ultimate governing body of a higher education institution and, on the other hand, an advisor to the institution, is both legally straight-forward and basic to long-standing, vital principles of institutional governance in higher education.

Regulation of trustees' conduct under the Dodd-Frank Act would be not only contrary to legislative intent and inconsistent with longstanding SEC interpretation of "advisor," it is also unnecessary. The conduct of trustees of colleges, universities, and institutionally related foundations is already subject to a multitude of laws. Trustees must comply with state not-for-profit corporation law; fiduciary duty laws; institutional policies, such as policies on conflicts of interest; state education law; the standards of accreditation bodies; IRS rules for tax-exempt organizations; and multiple other regulatory regimes.

Whereas municipal advisory firms may be able to offset the burdens of regulatory compliance, volunteer trustees are differently situated. Institutions of higher education are challenged to attract the most highly qualified volunteers to invest uncompensated time in trusteeship. A perception that trustees may be deemed municipal advisors would exacerbate this challenge, particularly with regard to recruitment of persons with financial expertise.

For reasons I've described, AGB supports the provisions in H.R. 2827 clarifying that certain persons acting in their capacity as elected or appointed members of a governing body are not municipal advisors. We note, however, that the language in H.R. 2827 only exempts "any elected or appointed members of a governing body of a municipal entity, with respect to such member's role on the governing body," but does not similarly exempt elected or appointed members of a governing body of an "obligated person," such as trustees of private non-profit universities, and trustees of institutionally related foundations. We recognize that the exemption was likely drafted this way in light of the fact that the Bill also narrows the general definition of "municipal advisor" to only include persons providing advice to a municipal entity, and not to an obligated person. If, however, the Bill were to be amended to include in the definition of "municipal advisor" persons providing advice to obligated persons (as under current law), we would urge the Committee to expand the exemption to include elected or appointed members of a governing body of an obligated person, with respect to such member's role on the governing body, in order to ensure that the exemption covers trustees of private non-profit universities, and trustees of institutionally related foundations. In that event we also would urge that the exemption for employees of municipal entities be similarly expanded to include employees of obligated persons, to ensure that staff members of private non-profit universities, and of institutionally related foundations, would not be considered municipal advisors.

Again, I thank you for this opportunity.

James E. Geringer