

GOVERNMENT FINANCE OFFICERS ASSOCIATION

Policy Statement

Preemption of State Investor Protection Laws

Background

The Constitution assigns certain responsibilities to the federal government and preserves state prerogatives in other areas. In some cases, federal and state governments share responsibilities. However, the role of the federal government has not been as regulator of state or local government financial or securities policies. Such intervention or preemption of the legitimate role of state authorities would be a drastic departure from the principles of federalism and would be an encroachment on state sovereignty.

One area in which federal and state governments share responsibility is the protection of public funds invested in the securities markets. Investor protection includes the enactment and enforcement of securities regulation as well as an assurance of meaningful access to the judicial system to provide effective remedies against those who violate state or federal securities laws or common law fiduciary responsibilities.

State and local governments participate in the securities markets both as investors of pension funds and temporary cash balances as well as issuers of municipal debt. They therefore have an interest in preserving well-established investor rights as well as protecting themselves from unwarranted and expensive litigation. States protect their public funds through the enactment of state investment statutes and state securities laws that are designed to respond to specific identifiable state needs, and by permitting private rights of action under securities and contract law or common law trust principles.

Recent changes in the federal securities laws have erected substantial new hurdles for both access to federal courts and the remedies available for aggrieved investors by imposing stringent pleading requirements, restricting discovery, eliminating joint and several liability, and permitting a safe harbor for forward looking statements. In many cases, state private rights of action now remain the only method of obtaining recovery for defrauded investors by permitting liability for aiding and abetting wrongdoing, joint and several liability, and reasonable statutes of limitations for the filing of claims. In addition, many causes of action do not depend on an alleged violation of state or federal securities laws but on state contractual or common law fiduciary violations long recognized as state prerogatives.

GFOA Position

GFOA believes that state laws and access to state courts serve as deterrents to securities and contract law and fiduciary duty violations. GFOA supports the rights of states to protect public investors, and opposes federal efforts to preempt state laws regulating investments and securities transactions, as well as those designed to preempt contractual rights and other common law protections for public investors and their taxpayers. In addition, GFOA opposes federal efforts to further limit access or remedies provided by state courts for defrauded public investors seeking recovery.

Approved by Committee on Cash Management and Committee on Governmental
Debt and Fiscal Policy
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