



PUBLIC POLICY STATEMENT

SEC Definition of Municipal Advisors (2011)

The GFOA's membership will vote on this public policy statement at the 2011 Annual Business meeting being held in San Antonio, Texas, on Tuesday, May 24, 2011.

Background

The GFOA supports the regulation of municipal financial advisors which was included in the Section 975 of the 2010 Dodd-Frank Act. Section 975 of the Dodd-Frank Act states that independent municipal financial advisors must register with the Securities and Exchange Commission (SEC) and meet various regulatory requirements set forth by the SEC and the MSRB. These requirements include: registration requirements, meeting federal fiduciary standards, having federal securities law liabilities, paying registration fees, and meeting federal financial disclosure standards.

In its proposed rule, 34-63576, the SEC has stated that elected members, elected ex-officio, and employees of a municipal entity's governing board are exempt from the definition of "municipal financial advisors." However, non-elected (appointed) members of a governing board would be considered to be municipal financial advisors. The SEC is proposing that anyone serving as an appointed member of a governing body, where municipal bond and investment issues are discussed, would be considered a municipal advisor and subject to SEC and MSRB rules for municipal financial advisors. This overly broad definition would include appointed members of governmental and non-profit advisory boards, public pension funds, and would also encompass employees of one jurisdiction who may serve on the board of, or simply advises, another governmental jurisdiction.

In its proposed rule, the SEC does not recognize that a state and local government governing board, comprised of appointed members, can not serve as an advisor to itself. Nor does it recognize the role of appointed members to governmental bodies, which in many instances, are appointed by an elected body, and treated as public officials.

If Congress had intended for appointed members of governing bodies to be included within the municipal financial advisor definition, it would have made this point clear in the statute.

Policy Statement

The Government Finance Officers Association opposes the proposed definition of municipal advisors to include appointed members to governing bodies. Instead, the GFOA insists that the SEC exclude all governing body members and the employees of appointed bodies, including those that serve across jurisdictional boundaries, from the municipal advisor definition.

The GFOA's Executive Board has recommended this policy statement for approval by the GFOA's membership, February 2011.