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United States House of Representatives
Committee on Ways and Means
Subcommittee on Oversight

Hearing on the Transparency and Funding of State and Local Pension Plans

May 5, 2011

Statement for the Record

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide comments on the transparency and funding of state and local pension plans. The condition of state and local pension plans is an important issue for participants in the $2.9 trillion municipal bond market, and we commend Chairman Boustany for calling this hearing.

Our comments focus on issues raised by legislation pending in the House, H.R. 567, the Public Employee Pension Transparency Act of 2011. H.R. 567 would prohibit the federal government or the Federal Reserve from bailing out any state or local pension plan that was unable to meet its obligations. The bill would also require that pension plans make certain disclosures to the Treasury Department regarding funding status and other factors and mandate that the plans determine their funding status based on discount rates determined by yields on Treasury securities, either as the principal reporting method or in supplemental reports. Public employee pension plans would also have to report their liabilities using a uniform accounting standard. Those governments affiliated with plans that do not file the reports or are found not to be in compliance would not be able to issue tax-exempt bonds or tax-credit bonds during the period the plan was deemed by Treasury to be out of compliance.

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

SIFMA supports the provision in H.R. 567 that would prohibit federal bail-outs of state and local pension plans. We note that we are not aware of any state or local pension plan seeking federal financial assistance. Indeed, the tide seems to be turning for some state and local pension plans. Late last month, the National Association of State Retirement Administrators and the National Council on Teacher Retirement reported that state and local pension assets at the end of 2010 were 35 percent higher than their 2009 lows and that long-term investment returns for many plans exceeds projected assumptions, even accounting for weak returns brought about by the financial crisis and recession. Nevertheless, we feel a prohibition on federal bail-outs send an appropriate message to state and local pension managers.

We also support the goal of H.R. 567 to promote more and better disclosure by state and local pension plans. However, we do not support using the tax code as the means to implement that policy.

SIFMA is a strong supporter of informational transparency by issuers of public securities. Financial disclosure is a cornerstone of our securities markets, and SIFMA supports reasonable policies that promote timely and sound disclosure practices. While SIFMA supports better transparency and disclosure in all markets, we believe that rescinding the ability of state and local government entities to issue tax-exempt bonds is not the appropriate means to engender better pension liability disclosure, and the Treasury Department is not the appropriate agency to enforce such requirements.

Information disclosure by issuers of securities is generally regulated by the Securities and Exchange Commission ("SEC"), not the Treasury Department. Two provisions of federal securities law limit the ability of the SEC to regulate the disclosure practices of state and local governments. First is the inclusion of municipal bonds as "exempt securities" (Section 3(a) of the Securities Act of 1933) over which the SEC has limited authority regarding issuer disclosure. Second is the so-called Tower Amendment (Section 15B(d) of the Securities Exchange Act of 1934), which prohibits the SEC and the Municipal Securities Rulemaking Board ("MSRB") from requiring states or localities to make any information filing prior to issuing securities. The Tower Amendment also prohibits the MSRB from requiring municipal securities issuers to file disclosure statements generally.

Despite the limitations in the authority of the SEC and MSRB regarding issuer disclosure, regulators have taken numerous steps in recent decades to improve the quantity and quality of information available to municipal bond investors. Regulators have used their authority under the anti-fraud provisions of the securities laws (Section 10(b) of the Securities Exchange Act of 1934) and their authority over securities dealers to effectively mandate and enforce municipal issuer disclosure. Primary market disclosure in the municipal market is typically required to be submitted to the MSRB by the broker-dealer; and broker-dealers are required to bind issuers contractually to produce and submit continuing disclosure to the MSRB. We are not advocating any changes to federal securities laws regarding pension disclosure by states and localities. We also do not believe that effectively imposing such requirements through the federal tax code would be appropriate.

Further, municipal industry participants and regulators are already taking measures to improve pension disclosure practices. The SEC has sharpened its focus on state and local government pension liability disclosure and has taken several high-profile enforcement actions in recent years against state and local governments deemed to have made incomplete or misleading disclosures regarding their pension plans. The National Association of Bond Lawyers is spearheading a pension-disclosure project to bring participants together to promote more and better information disclosure, with the goal of completing the project by year-end. The Governmental Accounting Standards Board ("GASB")—the principal accounting standards body for state and local governments and agencies—has also undertaken a major project to review pension disclosure and accounting practices and plans to release updated guidance in the future. We believe the GASB initiative in particular holds significant promise with regard to improving pension disclosures. A large number of states and localities are required to adhere to GASB standards regarding their accounting and disclosure practices, and we believe Congress should allow GASB's efforts to take hold before moving legislation with regard to state and local pension disclosure.

SIFMA looks forward to working with the Subcommittee and other interested members of Congress on this important issue and can provide further information if needed. Thank you for your time and consideration.