



March 8, 2019

Mr. David R. Bean
Director of Research and Technical Activities
Project No. 3-13
Governmental Accounting Standards Board
401 Merritt 7
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Dear Mr. Bean:

Members of the American Institute of Certified Public Accountants (AICPA) State and Local Government Expert Panel have reviewed the Governmental Accounting Standards Board (GASB) Exposure Draft (ED), *Fiduciary Activities Implementation Guide* and are pleased to offer our comments. Our most significant concerns appear in the following section and relate to Questions 4.5 and 4.18. The remainder of our comments are presented in the Other Comments section of this letter.

Significant Concerns

Question 4.5

We believe the lack of a governing board for pension and OPEB plans is common, and therefore the precision and clarity of question 4.5 is critical. This question, as drafted, is too simplistic and generic to address the various common and complex situations when a trusted plan has no governing board. In addition, this question was written from the perspective of a trusted plan, and we are unsure if it should be applied to scenarios of a trust equivalent.

We also have a number of continuing concerns and questions related to the application of GASB Statement No. 84, *Fiduciary Activities*, to various deferred compensation and defined contribution plans, such as plans under IRC sections 457, 401(k), and 403(b). Many of these types of plans do not have governing boards; therefore, the Board should consider addressing the unique circumstances of these plans through additional questions.

Mr. David Bean

March 8, 2019

Page 2

Without additional guidance, the principal objective of GASB Statement No. 84, to enhance the consistency and comparability of fiduciary activity reporting by state and local governments will not be achieved. Our specific suggestions follow:

Reporting Entity Criteria

The answer to Question 4.5 states, “a government that performs the duties of a governing board in the absence of one should be considered equivalent to a governing board for which the government appoints a voting majority.” While we agree with this conclusion, the question cites examples of such activities as “government determines or amends the structure of the plan [vesting requirements and required contributions.]” We believe the question could be misinterpreted to mean that the examples are the only activities that could qualify. As currently drafted, sponsoring governments of plans without governing boards may read the example activities and conclude their responsibilities are not equivalent to those identified. Consider, for example, a pension plan without a governing board that is created out of a state statute that establishes the vesting requirements and required contributions.

Further, there are often numerous parties involved in the administration of plans (e.g., sponsoring government, trustee, custodian, investment advisor, and record keeper). The only party we believe would likely perform the duties of a governing board in the absence of one is the sponsoring government.

Therefore, the Board should revise the answer to this question to help preparers determine how to apply the element “appoints a voting majority of the organization’s governing body” of paragraph 21a of GASB Statement No. 14, *The Financial Reporting Entity*, when there is no governing board of the plan. Refining the answer to emphasize that the sponsoring government would normally be presumed to fulfill the role of governing body would greatly improve understanding and consistency in reporting.

Equivalent Arrangements (403(b) Plans)

Since Question 4.5 is written specifically for a trusted plan, we are unclear which path within GASB Statement No. 84 to consider plans organized under IRC section 403(b) (403(b) plans). These plans consist of numerous individual accounts with protection from creditors, but are not in a trust. We recommend the Board address this nuance. Additionally, we offer the following areas for the Board’s consideration which will likely need to be contemplated in combination with the scope of GASB Statement No. 67, *Financial Reporting for Pension Plans—an amendment of GASB Statement No. 25*.

Mr. David Bean

March 8, 2019

Page 3

The first relates to whether the structure of 403(b) plans are considered an equivalent arrangement to a trust. Depending on how a government answers this question, the reporting result will vary significantly as the following scenarios illustrate:

- If not considered an equivalent arrangement and not subject to GASB Statement No. 67, then it appears the only potential path to reporting the 403(b) plans as a fiduciary activity would be through paragraph 11 of GASB Statement No. 84, which would require control of the assets by the sponsoring government. We anticipate it will be unlikely for the sponsoring government to meet the control criteria and, therefore, the 403(b) plan would not be reported as a fiduciary activity.
- If considered an equivalent arrangement and subject to GASB Statement No. 67, then the question of whether the trust equivalent is legally separate is unclear. Question 4.3 of the ED makes the point that this is a legal issue. This answer, without further clarification, will lead to additional disparity in practice.

Second, it appears the existence or lack of sponsoring government contributions will impact the reporting of 403(b) plans as the following scenarios illustrate:

- If the sponsoring government does not make contributions to the 403(b) plan, it appears GASB Statement No. 67 would not be applicable. Therefore, the only path to potential reporting the plan as a fiduciary activity would be through paragraph 11 of GASB Statement No. 84, which would require control of the assets by the sponsoring government.
- If the sponsoring government does make contributions to the 403(b) plan, we believe these plans could be in scope of GASB Statements No. 67 or 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*. However, our experience is that these plans are rarely reported as pension plans of the sponsoring government.

Without further guidance from the Board on the above areas, diversity in practice on whether to report 403(b) plans as fiduciary activities is likely. We encourage the Board to further study the circumstances of these plans and consider if existing generally accepted accounting principles (GAAP) properly addresses the reporting requirements.

Mr. David Bean

March 8, 2019

Page 4

Application to 401(k) Plans

Also relevant to the reporting entity considerations are 401(k) plans. These differ from 403(b) plans in that there is typically a plan trust. However, similar to 403(b) plans, 401(k) plans often do not have a governing body and may or may not have employer contributions. Therefore, similar considerations around the existence or lack of sponsoring government contributions will impact the reporting of 401(k) plans as the following scenarios illustrate:

- If the sponsoring government does not make contributions to the 401(k) plan, it appears GASB Statement No. 67 would not be applicable, and therefore the only path to potential reporting the plan as a fiduciary activity would be through paragraph 11 of GASB Statement No. 84, which would require control of the assets by the sponsoring government.
- If the sponsoring government does make contributions to the 401(k) plan, we interpret these could be in scope of GASB Statement No. 67. However, our members' observations are that these plans are rarely reported as pension plans of the sponsoring government. This highlights the need for additional clarity in GAAP.

Without further guidance from the Board, diversity in practice on whether to report 401(k) plans as fiduciary activities is likely. We encourage the Board to further study the circumstances of these plans and consider if existing GAAP properly addresses the reporting requirements.

Application to Deferred Compensation Plans

The Board should clarify how to apply GASB Statement No. 84 to deferred compensation plans (457 plan) through an additional question. While existing GAAP (i.e., Implementation Guide No. 2015-1, Question 5.116.5) indicates that for purposes of financial reporting, a 457 plan is not classified as a pension plan, we have concerns that this question, classified under the applicability of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions—an amendment of GASB Statement No. 27*, will be overlooked for purposes of applying GASB Statement No. 84. While existing GAAP does not consider these pension plans, it seems likely that some may erroneously conclude that a 457 plan with an employer contribution would meet the scope of GASB Statement No. 67. This determination of applicability of GASB Statement No. 67 is critical to the proper application of GASB Statement No. 84 as it dictates the criteria to consider. Therefore, the Board should include a question to clarify that 457 plans be considered under paragraph 11 of GASB Statement No. 84 (requiring control of the assets by the

Mr. David Bean

March 8, 2019

Page 5

sponsoring government) in this implementation guide to improve consistency in application.

We acknowledge that Board has a current project on its agenda to address deferred compensation plans. However, with implementation of GASB Statement No. 84 nearing, guidance is needed, even if temporary until the conclusion of the project. We look forward to the development of the Board's deferred compensation plans project.

Editorial Suggestion

In addition to our recommendation in the "Reporting Entity Criteria" section to specifically cite the sponsoring government as the party performing the duties of the governing board, we have editorial observations to offer. As drafted, we are unclear about the meaning of the reference to "another government" in the first sentence. Some interpreted it to mean a sponsoring government whereas others thought it was an entirely separate government that participates in the plan. It could also be interpreted that the pension/OPEB plan is a government itself. We propose replacing "another government" with "the sponsoring government" for clarity. This comment also applies to Question 4.6.

Q—A pension or OPEB plan that is administered through a trust that meets the criteria in paragraph 3 of Statement 67 or paragraph 3 of Statement 74, as applicable, does not have a governing board. Instead, ~~another government~~ the sponsoring government performs the duties that a governing board typically would perform ...

Finally, we suggest the Board revise the answer to Question 4.5 to cite the full wording of paragraph 7 of GASB Statement No. 84 as provided in our edit below to address situations, such as defined contribution plans, when the government is not legally obligated to contribute but has otherwise assumed the obligation.

A—Yes. In accordance with... Further, in accordance with paragraph 7 of Statement 84, a government is considered to have a financial burden if it is legally obligated or has otherwise assumed the obligation to make contributions to the pension or OPEB plan. As a result, the plan should be included as a fiduciary component unit of the other government.

Question 4.18

We have concerns with the conclusion that the establishment of fees related to the generation of funds is an indicator of administrative involvement and suggest the Board delete this question. Question 4.18 concludes that the establishment of fees to be charged is analogous to the determination of eligible expenditures in defining administrative involvement. Administrative involvement, as discussed in GASB Statement No. 84, focuses on examples related to expenditures, and we believe it cannot

Mr. David Bean

March 8, 2019

Page 6

be similarly applied to fee revenues. There are many current situations in school districts and universities where the board approves the annual fees to be charged for student clubs as part of a routine action, and not as part of any substantial involvement in the student clubs. In addition, universities often include fees for various items in a tuition bill. The broad notion of setting fees will inappropriately preclude the activities of many student clubs from being reported as fiduciary activities. See also our related comment on Question 4.37.

Other Comments

Question 4.15

The Board should revise the last sentence of the answer to Question 4.15 to clarify that the assets may be used in a manner that generates revenue for the county but that the assets themselves are not derived from the county's own-source revenues. Otherwise, readers may confuse the *ability to use the funds* at the county run commissary which generates revenue with *whether the assets themselves* were derived from the county's own-source revenues.

A—Yes. The county is holding the inmate accounts, Finally, while the assets may be used to generate revenue for the county, the assets themselves are not derived from the government's provision of goods or services to the inmates.

Question 4.16

While we agree with the conclusion that the assets in the clearing account are not fiduciary in nature, we recommend the Board elaborate on why payroll withholdings become a liability to the government. We believe the liability stems from an underlying exchange transaction between the government and its employees but we ask the Board to clarify the answer to the question on this point.

Question 4.17

The Board should delete the first sentence of the answer to focus on why paragraph 11c(2) applies. The concept of assets benefitting an organization as an institution versus the individuals that constitute the organization is not a critical aspect as the club is not considered an institution.

A—~~Assets are for the benefit of an organization if the benefits accrue to the organization as an institution, rather than to the individuals that constitute the organization. However, in In~~ this scenario, because the club is not legally separate from the primary government, it is not itself an institution. As a result, the provisions in paragraph 11c(2) of Statement 84 should be applied.

Question 4.36

The Board should recast the question to focus on the county's revenue stream first and then discuss the revenue sharing to better illustrate the point that it is the government's own-source revenue. As drafted, the scenario of a license agreement, if read quickly, appears to be a collection arrangement. We also suggest the Board include a question addressing a collection arrangement to show the contrasting scenario.

Question 4.37

We suggest the Board delete the second sentence of the question related to the board of regents' approval of fees. As noted in our comments to Question 4.18, fee setting is often a routine action, not reflective of substantial involvement. The scenario in Question 4.37 cites university management's evaluation and authorization of expenditures which alone constitutes administrative involvement.

Q—A university charges each enrolled student an activity fee to fund student programs and activities. ~~The university's board of regents approves the fee to be charged.~~ The university management evaluates the student proposals for expenditure of the fees, and the board makes the final decision to authorize the expenditure. The university bills the activity fee with the student's tuition each year and deposits the fees received into its central bank account. Should the student activity fees collected be considered own-source revenues of the university, as described in paragraph 13 of Statement 84?

Question 4.52

This question highlights that there could be two columns of custodial funds (i.e., custodial funds and the external portion of investment pools that are not held in trust) and we are concerned that this point may be overlooked by preparers. The focus of GASB Statement No. 84 has been on the definition of fiduciary activities and the four types of fiduciary funds. Therefore, we suggest the Board emphasize the separate reporting of custodial funds in this circumstance by describing the two custodial fund columns in the answer or by including an illustration to show more than four columns.

Further, this question appears to be misplaced under "reporting fiduciary component units" as external investment pools are generally not component units. The Board should move this question under the heading "Reporting Fiduciary Activities in Fiduciary Funds; Custodial Funds" or another appropriate section.

Mr. David Bean
March 8, 2019
Page 8

The AICPA appreciates the opportunity to comment on the ED. Due to the comprehensive nature of this ED, this comment letter was prepared by members of the AICPA's State and Local Government Expert Panel and was not reviewed by the AICPA's Financial Reporting Executive Committee. Therefore, this response represents only the views of individual members of the State and Local Government Expert Panel and is not an official position of the AICPA. Representatives of the State and Local Government Expert Panel would be pleased to discuss these comments with you at your convenience.

Sincerely,



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Expert Panel



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cc: State and Local Government Expert Panel
Dan Noll