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Mr. David R. Bean
Director of Research and Technical Activities
Project No. 24-16ED
Governmental Accounting Standards Board
401 Merritt 7
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Norwalk, CT 06856-5116

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), *Implementation Guide No. 201X-Y, Implementation Guidance Update-201X,* and are pleased to offer our comments. While we support many of the questions in the ED, we are concerned with the questions addressing the concept of partitioning a trust, as well as a question which appears to expand tax abatement disclosures to certain agreements. These concerns are addressed in the "Significant Concerns" section of this letter. Additional concerns appear in the section below titled, "Other Comments and Recommendations," and our editorial suggestions appear in the section titled, "Editorial Revisions."

In cases where we propose specific edits or revisions to questions, we provide markups of changes recommended using red font. Additionally, a number of our comments are similar to those included in our December 23, 2016, comment letter (CL) to the *Implementation Guide No. 201X-X, Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans ED*. We have cross-referenced those comments to our previous CL using the following notation: *(OPEB CL: Question x.xx)*.

Significant Concerns

Partitioning a Trust

Question 5.10. We strongly suggest the Board correct the potential for a trust that provides both pensions and other postemployment benefits (OPEB) from being "disqualified." In circumstances in which both pension and OPEB benefits are paid through the same trust (without a partition), we believe preparers could interpret that this situation would not qualify as a trust (or equivalent arrangement) under either GASB Statement No. 67, *Financial Reporting for Pension Plans*, or GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, and would result in the employer(s)

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being required to follow the accounting guidance for plans that are not administered through a trust (or equivalent arrangement). If that is the Board's intent, we strongly disagree with the resulting impact which would include discounting both the total pension liability and the total OPEB liability using a 20-year, AA tax-exempt general obligation municipal bond index. If the trust is only paying benefits to retirees (i.e., no active benefits) and it meets the criteria in paragraph 3 of GASB Statements No. 67 and No. 74, we believe it should be accounted for as a trust regardless of whether a partition exists.

Question 4.17. We have significant concerns about the potential ambiguity related to the determination of whether a trust has "partitions" that would allow an entity to consider the separate parts of the trust to be individual trusts. Specifically, it is not clear what a partition means and whether each "subtrust" must individually meet the criteria for being a trust (or equivalent arrangement).

This question implies there are circumstances in which pension benefits may meet the criteria in paragraph 3 of GASB Statement No. 67, or paragraph 4 of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions—an amendment of GASB Statement No. 27* to be reported as a qualifying pension trust, even though they are administered through a single trust that also provides some other benefit that is not a pension (e.g., OPEB or active employee benefits). However, we are unclear as to what criteria (i.e., steps to be taken to ensure that the assets are dedicated solely to pensions) should be used in evaluating whether a "partition" of the trust would meet the criteria in paragraph 3 of Statement No. 67 or paragraph 4 of GASB Statement No. 68. We assume the term "partition" in the context of a single trust means that a mechanism within the trust document exists such that the segregated (allocated) assets are legally restricted to only paying pension benefits. However, the answer states that "once initially allocated to pensions, are dedicated solely to providing pensions" and we are uncertain whether "dedicated" as used here is the same as "legally restricted."

We recommend the Board perform additional research and outreach before proceeding with this question to determine whether it is necessary and, if so, what criteria would effectively partition a trust. This research should also include analyzing trust documents that are believed to meet the criteria for being "legally restricted" so that more clarity can be provided in the question and answer if it is retained. We also suggest when a trust does not meet the criteria for "partitioning," that the description of the accounting treatment specifically cite GASB Statement No. 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*. *(OPEB CL: Question 4.13)*

Finally, we noted inconsistencies between the partition described in this question and the criteria to separate assets in a trust (Question 5.13), evaluate whether a there are separate plans in a trust (Question 5.21), and determine the type of pension plan (Question 5.22). Changing the focus of this question to "legally restricted" would eliminate these inconsistencies. But if the Board does not change the focus, it should address these inconsistencies.

Tax Abatement Disclosures

Question 4.42. We are concerned that this question could be read to expand the applicability of GASB Statement No. 77, *Tax Abatement Disclosure,* and recommend the Board make several clarifications.

First, the Board should clarify whether or not the developer in this scenario is the entity paying the property tax. If the developer does not pay the tax, there can be no tax abated and GASB Statement No. 77 would not apply.

Second, for situations in which the developer pays tax, we believe the answer depends on how the Tax Incremental Financing District (TIF) records the transaction. If the government is offsetting the property tax revenue with the future payments to be made to the developer (i.e., reporting at net), we agree that this situation meets the definition of a tax abatement in paragraph 4 of GASB Statement No. 77. However, our members report that the transaction described in this question is more often reported by governments as two separate "gross" transactions (i.e., the revenue of the property tax and the expenditure for the development incentive). The incentive payment is not considered a refund or uncollectible amount. Without a reduction in tax revenue, this situation does not appear to meet the definition of a tax abatement in paragraph 4 of GASB Statement No. 77. We recommend the following change to reduce the complexity and potential for misinterpretation as follows:

> Q—A local government enters into an agreement with a real estate developer for the purpose of stimulating economic growth. Under the terms of the agreement, the developer will construct a building on a property owned by the developer and for which the developer pays the property tax. The government will rebate to the developer the incremental property tax revenues paid by the developer. ~~generated above a baseline established prior to the agreement, based on certain costs incurred by the developer related to the new building. The rebate to the developer is limited to no more than the amount of the incremental property tax revenues.~~ Does this agreement meet the definition of a tax abatement in Statement 77?
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> A—Yes, if the government is accounting for the payment to the developer as a tax refund under paragraph 18 of GASB Statement No. 33. ~~Unlike the transaction described in Question 4.77 in Implementation Guide 2016-1, this agreement meets the definition of a tax abatement in Statement 77, although both may be labeled as a tax increment financing. The developer is promising to take the specific action of constructing a building for purposes of economic development, and the government is forgoing tax revenues to which it is otherwise entitled by returning some or all of the incremental property tax revenues to the developer.~~ Although many tax abatements directly reduce the amount of taxes paid and do not involve the actual collection and return of taxes, when the tax revenues are reduced in the financial statements due to refunds, ~~the mechanism used to transact the abatement is not relevant to determining whether a transaction meets the definition of an abatement. Therefore, the fact that the government receives property taxes and subsequently rebates those tax receipts to the developer means that~~ the government did, in substance, forgo tax revenues.

Other Comments and Recommendations

Questions 4.4-4.6 and 4.7-4.9. We suggest clarifying within the answer to Questions 4.4 and 4.7 that the concept of the limitation on access to Trust B only upon instruction from the employer negates its ability to qualify as a trust dedicated to pensions. We believe the criteria in paragraph 3(b) of GASB Statement No. 67 (Questions 4.4-4.6) and paragraph 4(b) of GASB

Statement No. 68 (Questions 4.7-4.9) would not be met because the employer retains control of whether or not Trust B assets are indeed moved to Trust A to provide pensions. However, some of our members interpreted these examples to mean that Trust B could qualify under paragraph 3(a)-3(c) of GASB Statement No. 67 or paragraph 4(a)-4(c) of GASB Statement No. 68 as a pension trust or equivalent. Therefore, we recommend the Board incorporate our suggested revision below to provide clarity on this point. Note that we have only included Question 4.4 relating to plans. Parallel edits should be made to 4.7 addressing employers. *(OPEB CL: Questions 4.42-.44)*

> 4.4. Q—An employer provides OPEB through a single-employer OPEB plan that is administered through a trust that meets the criteria in paragraph 3 of Statement 67 (Trust A). Benefits are paid through Trust A, and the trustees of Trust A establish contribution requirements based on the resources accumulated in Trust A. The employer establishes a second trust (Trust B) to accumulate resources to "stabilize" the amount of its general fund resources that it will need to use to meet contribution requirements to Trust A in the future. Assets in Trust B are restricted to use for that purpose and can be moved to Trust A only upon instruction from the employer. Assets accumulated in Trust B are irrevocable by the employer and are protected from creditors of the employer. Should the balances and activities of Trust A and Trust B be included in the balances and activities of the single-employer pension plan?
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> A—No. In this circumstance, only the balances and activities of Trust A should be reported as part of the single-employer pension plan. In the circumstance described, benefit payments can be made to plan members only through Trust A, and Trust A cannot directly access the assets of Trust B. Trust B does not meet the criteria in paragraph 3 of Statement 67 to be considered a trust or equivalent arrangement because the plan assets are not dedicated to providing pension to plan members in accordance with the benefit terms. Rather, the plan assets are dedicated to providing future contributions to a pension plan at the discretion (control) of the employer. Therefore, the balances and activities of Trust B are not part of the pension plan. Instead, the assets in Trust B, which will benefit the employer through reduced future cash flow demands on that employer's general fund resources, continue to be assets of the individual employer.

Consider New Question to Follow 4.11. We suggest the Board include an additional question to clarify that the restriction should be reflected net of the pension liability.

> Q—Should the employer in Question 4.7, Question 4.8, and Question 4.9 report the assets accumulated in Trust B as restricted net position net of the related liability?
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> A—Yes. To the extent the assets in Trust B exceed the related plan liability, the employer should present restricted net position (for pensions). However, if the net pension liability exceeds the restricted assets, there would be no restricted net position to report, and the residual would fall to unrestricted net position.

Question 4.12. Members reviewing this question had differing interpretations of it. Therefore, we suggest that more details be added to provide clarity. The main area of confusion surrounded whether the state was considered the fiduciary of the plan. The answer is dependent on whether the plan is part of the state's reporting entity. If the plan is presented in a different reporting entity from the state, the state would present the trust as an investment trust fund. We suggest the answer be revised to address the question from both perspectives.

Question 4.15. We suggest this question be deleted because, when read in conjunction with Question 4.17, it would disqualify plans without a partition from the trust criteria in paragraph 3 of GASB Statement No. 67 and paragraph 4 of GASB Statement No. 68. This is problematic because there are current situations in which pension trusts are providing insignificant disability benefits and are retaining their qualifying trust status due to the immateriality provision of the standard. However, if the Board retains the question, we suggest deleting the last sentence of the answer ("However, any disability benefits provided through a pension plan should be classified as pensions.") since such disability payments are not pensions.

Question 4.27. We suggest this question be deleted because Question 4.26 adequately addresses the concept being highlighted. Further, if this question is read in isolation, the answer could be misleading because it omits much of the detail included in Question 4.26. *(OPEB CL: Questions 4.138)*

Question 4.34. We suggest this question be deleted as it describes an uncommon occurrence with a potentially confusing impact on financial reporting. The question addresses a distinction without a difference (i.e., prepaid amount vs. deferred outflow for contributions subsequent to the measurement date). As a practical matter, contributions, once made, are irrevocable, and so reporting a prepaid amount (even if conceptually correct) could be interpreted as less restrictive than a contribution subsequent to the measurement date.

Question 4.38. We suggest the answer to this question be expanded to also clarify that the net asset value (NAV) disclosures are not relevant. We appreciate the inclusion of this question as it has been an area of much confusion in practice. However, the answer excludes a portion of the practice issue which is whether NAV disclosures in GASB Statement No. 72, *Fair Value Measurement and Application*, are relevant.

> Q—A local government has an investment position in an external investment pool. How should the local government's investment position be categorized within the fair value hierarchy for purposes of the note disclosure requirement of paragraph 81a(2) of Statement No. 72, *Fair Value Measurement and Application*?
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> A—If the external investment pool is compliant with paragraph 4 of Statement No. 79, *Certain External Investment Pools and Pool Participants*, and for financial reporting purposes elects to measure all of its investments at amortized cost, the local government's investment position is not measured at fair value. Instead, it is measured at amortized cost in accordance with paragraph 41 of Statement 79 and, thus, should not be categorized within the fair value hierarchy.
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> If, instead, the external investment pool generally measures its investments at fair value in accordance with paragraph 5 of Statement 79 or paragraph 16 of Statement No. 31, *Accounting and Financial Reporting for Certain Investments and for External Investment Pools*, as amended, the local government's position is measured at fair value in accordance with paragraph 41 of Statement 79. This is the case regardless of whether the pool transacts with participants at a floating net asset value per share or a fixed net asset value per share (for example, $1.00). Similar to investments that are measured in accordance with the provisions of paragraphs 71–74 of Statement 72, positions in external investment pools that are measured at fair value should not be categorized within the fair value hierarchy for purposes of paragraph 81a(2) of Statement 72 nor apply the NAV disclosures in paragraph 82 of Statement 72.

Additional Question to Consider: We recommend the Board add a question regarding circumstances in which the "long-term expected rate of return on plan assets" assumption is lower than the yield or index rate for 20-year, tax-exempt, general obligation municipal bonds with an average rating of AA/Aa or higher. Consider the following suggestion: *(OPEB CL: Additional Question to Consider)*

> Q - A defined benefit plan is administered through a trust that meets the criteria in paragraph 3 of Statement 67 or paragraph 4 of Statement 68. The employer(s) provide minimal advance funding and the assets are invested on a relatively short-term basis. Accordingly, the long-term expected rate of return on plan assets is less than the yield (or index rate) for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher. What rate should be used to discount future projected benefit payments?
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> A – All of the projected benefit payments in this example should be discounted using the yield (or index rate) for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher. In effect, this rate serves as a de facto floor (minimum rate) for the long-term expected rate of return on plan assets because in no circumstance, should a discount rate be lower than if the plan was not administered through a trust or equivalent arrangement (e.g. funded on a pay-as-you-go basis).

Editorial Revisions

Question 4.3. We suggest the answer to this question focus on the trusts themselves instead of the funds and that the last sentence of the answer be deleted. The rationale for deleting "funds" at the end of first sentence of the answer is because the accounting fund structure is irrelevant to the answer. As for the last sentence of the answer, we believe it to be unnecessary since GASB Statement No. 67 applies whether or not separate financial statements are issued for a plan. *(OPEB CL: Question 4.41)*

> Q—If more than one trust that meets the criteria in paragraph 3 of Statement 67, *Financial Reporting for Pension Plans*, has been established to accumulate assets for purposes of providing pensions through a single-employer pension plan and assets in any of the trusts may be used interchangeably to provide benefits to any plan member, does Statement 67 apply to the separate reporting of each trust?
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> A—No. Absent a legal restriction that limits the use of the assets of any of the trusts to paying benefits for a specific subset of plan members, the arrangement described is one pension plan that is administered using multiple trusts ~~funds~~. The net position of all of the trusts (in the aggregate) constitutes the plan net position of the pension plan. ~~Therefore, Statement 67 would apply only if financial statements are issued for the pension plan, which would present one set of plan financial statements that incorporates the balances and activities of all the trusts.~~

Question 4.11. We suggest the follow edit to the answer of this question for clarity.

> Q—Should the employer in Question 4.7, Question 4.8, or Question 4.9 report the assets accumulated in Trust B as restricted for purposes of its government-wide or proprietary fund statement of net position or governmental fund balance sheet?
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> A—Yes. The trust provision that limits the use of the assets in Trust B to future employer contributions to the pension plan is an external limitation such that the assets accumulated in Trust B should be classified as restricted in the statement of net position or balance sheet in the governmental or propriety fund to which it pertains.

Question 4.14. We suggest the answer be revised to delete the phrase, "Even though the benefit is defined in terms of a dollar amount or formula" as it does not appear to be a qualifying condition of the answer. Striking the phrase makes the answer more direct. *(OPEB CL: Question 4.15)*

> Q—The terms of a postemployment benefit plan provide that those who retire from service will receive an amount, defined in terms of dollars or a formula, that may be used only (a) to offset the retiree's cost of premium payments for participation in the employer's healthcare insurance group with active employees or (b) for reimbursement of other healthcare costs, if the plan members provide proof of healthcare insurance costs or direct healthcare claims that are not reimbursed by others. Should the benefit be classified as a pension for financial reporting purposes?
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> A—No. ~~Even though the benefit is defined in terms of a dollar amount or formula, b~~Because the benefit is limited to the provision of postemployment healthcare, it should be classified as OPEB for financial reporting purposes.

Question 4.22 We suggest replacing "include" with "consider" when discussing assumptions as they are not always explicitly inputted, but rather considered for their impact. *(OPEB CL: Questions 4.108)*

> Q—Should OPEB be excluded from the determination of the actuarial present value of total projected benefit payments for purposes of applying Statement 67 or Statement 68 for any of the following reasons: (a) the benefits are not vested, (b) the benefits or employer contributions for benefits are collectively bargained, or (c) the benefits are substantially financed as they come due (sometimes referred to as "pay-as-you-go" financing)?
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> A—No. The projection of benefit payments should consider ~~include~~ all benefits provided for under the current substantive plan, including changes that already have been made and announced to the plan members at the pension plan's fiscal year-end. The projection should consider ~~include~~ both vested and nonvested plan members, considering relevant ~~with appropriate~~ demographic assumptions with regard to all plan members, and the requirements of Statement 67 or Statement 68 related to the projection of benefit payments apply without regard for the timing or method of an employer's financing of the benefits.

Question 4.26. We noted the need for a minor edit in the fourth sentence of the answer.

> In any periods in which those conditions are not expected to be met, the projected cash flows from employer contributions should not exceed the amounts expected to be paid from the employer's resources.

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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,

Heather S. Acker

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AICPA State and Local Government
Expert Panel

Mary M. Foelster

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cc: State and Local Government Expert Panel
Dan Noll