

November 14, 2014

ASOPs – Public Pension Plan Funding Request for Comments
Actuarial Standards Board
1850 M Street NW, Suite 300
Washington, DC 20036-4601

Re: ASOPs and Public Pension Plan Funding and Accounting

Dear Actuarial Standards Board Members:

Thank you for the opportunity to provide comments related to public pension funding and accounting. This is an important topic that affects the financial security of millions of state and local government workers, retirees and their beneficiaries.

The request asks members of the actuarial organizations that are governed by the ASOPs, as well as other interested parties, to comment on several questions related to public pension plans. The following offers responses to Questions 1 and 6, which I believe are the critical questions.

Question 1. Public plan funding and associated actuarial valuations are less uniformly regulated than those of private sector pension plans. Actuaries may be asked by their principal to advise on funding levels. Is additional guidance needed, beyond that in the recently revised pension ASOPs, to assist actuaries in performing their work and advising their principal? Why or why not?

ASOPs Nos. 4, 6, 27, 35 and 44 provide the framework for actuarial practice with regard to pensions (and other postemployment benefits) in both the private-sector and public-sector. Moreover, they have undergone painstaking review over the past decade, and have been revised to include distinctions that apply to public-sector plan practice, including assumptions set by another party. As such, the ASOPs present a coherent and consistent set of rules for actuarially valuing private-sector and public-sector pension plans.

In addition to the ASOPs, public pension plans are regulated by a variety of entities, including the:

- **Governmental Accounting Standards Board (GASB)** – which sets the generally accepted accounting principles (GAAP) related to accounting and financial reporting requirements for state and local governments, including: 1) state and local pension plans; and 2) state and local governments that sponsor pension plans.
- **U.S. Department of Treasury and Internal Revenue Service** – which, through the Internal Revenue Code, set the tax-qualification rules for governmental pension plans, including: 1) establishment of formal trusts and written plans; 2) requirements for definitely determinable benefits; 3) requirements for exclusive benefits; 4) limits on compensation used for benefit purposes; 5) limits on benefits and contributions; 6) minimum distribution rules; and other requirements.

- **State and Local Governments** – which establish state statutes, municipal ordinances, and often constitutional provisions regarding public pension financial reporting, funding, and protection of benefits.

As a result, public pension plans are subject to significant regulation. However, they are not subject to the funding rules of ERISA, which may be the reason this question asserts that public pension plan funding is less uniformly regulated than for private plans. But the exclusion of public pension plans from ERISA was not an arbitrary decision; rather it was at least partly the result of a U.S. Constitutional question regarding the relationship between the 10th Amendment and the Commerce Clause.¹ While I'm not an attorney, I believe efforts to regulate the funding of public pension plans would be subject to state sovereignty under the 10th Amendment.

Question 6. The current definition of an “intended user” of an actuarial communication is “any person who the actuary identifies as able to rely on the actuarial findings” (ASOP No. 41, Actuarial Communications, section 2.7). Should the ASOPs require the actuary for public pension plans to perform additional, significant work (which would be incorporated in the guidance provided in the ASOPs) that is not requested by the principal if that work provides useful information to individuals who are not intended users? Why or why not? If so, should this requirement be extended to all pension practice areas? Why or why not?

With regard to this question, I understand the terms “intended user” and “principal” to refer to the Retirement Board. If so, I believe this is the appropriate intended user of actuarial communications related to public pension plans. I also believe it would be inappropriate for the ASOPs to require an actuary for a public pension plan to perform additional, significant work that is not requested by the Retirement Plan, regardless of whether that work provides useful information to individuals who are not intended users, for the following reasons:

- The work done by the actuary is paid from plan resources. Under § 401(a) of the Internal Revenue Code, the plan must be maintained for the exclusive benefit of the plan members. Consequently, any work done for the benefit of non-members could not legally be paid by the plan and therefore would, if required, be paid by the actuary.
- The requirement that an actuary for a public pension plan “perform additional, significant work ... that is not requested by the principal if that work provides useful information to individuals who are not intended users” is essentially an unlimited requirement. Arguably, any information that someone deems “useful information” could be required if it is available to the actuary. Such information could include personnel records and other information that would otherwise be considered confidential.
- Moreover, for an actuary to provide information that is not at the request of the Retirement Plan to individuals who are not the intended users could lead to a breach of confidentiality

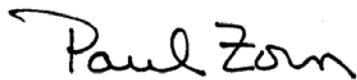
¹ In *National League of Cities v. Usery*, the U.S. Supreme Court held that tension between the Commerce Clause and the 10th Amendment must be resolved in favor of the states when Congressional action threatens the states' ability to act as sovereigns in the federal relationship. Although not directly related to public pension plans, the case played a role in excluding public pension plans from the funding requirements of ERISA.

and be in violation of state laws. Public-sector plan trustees have a fiduciary duty to the beneficiaries of their trust. If actuaries are required to release public plan information to parties outside the Retirement Plan, it could greatly increase the profession's exposure to litigation.

- It is likely that this requirement would result in situations where the information could be used to mislead others. There are numerous special interest groups that may mine the data for their own uses. Control of the actuarial work product, including a clear description of the intended users, is critical.

Finally, if these requirements are incorporated into the ASOP guidance, they should be extended to all pension areas, not just public pension plans.

Sincerely,

A handwritten signature in black ink that reads "Paul Zorn". The signature is written in a cursive, slightly slanted style.

Paul Zorn
Director of Governmental Research