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

Dear ASB Members:

Introduction

First, thank you for the opportunity to respond to your request for comments on the current application of the Actuarial Standards of Practice (“ASOPs”) in regards to actuarial valuations and other analyses used for determining Public Pension and Other Postemployment Benefit (OPEB”) plan funding and accounting.

Second, the comments herein are my own and should not in any way be associated with or attributed to the City of New York or the New York City Retirement Systems.

Third, before addressing the specific questions raised by the Actuarial Standards Board (“ASB”), I would like to make the following observations:

1. As noted by many others, the financial status and ongoing obligations of Public Pension and Other Postemployment Benefit Plans have become front-page news. That such Plans are generally not well-enough funded by actuarial standards, let alone economic valuation standards, has properly raised concerns about who, what and how these situations arose and how actuarial analyses are made and acted upon.
2. To date, actuaries have not received much criticism or had many fingers pointed at them. This may, however, be just fortuitous and, should a major blame game develop, looking for a common scapegoat, the actuarial profession could become an easy target.

3. It has been said that ASOPs can represent both swords and shields. This may be so but effectively so only if the ASOPs are strong. Inadequately designed or built swords and shields will fail when needed most in a time of battle. The current ASOPs, as applicable to actuarial practice for Public Plans may not be adequate to protect actuaries, their clients or the public.

With all of this said, to its great credit, the Actuarial Standards Board (“ASB”) is asking for input on what role actuaries should play and how possible expansion or revisions to the ASOPs might assist actuaries to do the best possible jobs as professionals.

One of the great challenges for the ASB raised by this request for input is how the ASB will be able to provide a response that sufficiently meets its stated reasons for being? For example, as part of the discussion of ASOPs, the ASB states the following:

“Standards. Standards of practice serve to assure the public that actuaries are professionally accountable. At the same time, standards provide practicing actuaries with a basis for assuring that their work will conform to appropriate practices. Standards protect the public by:

- *Indicating for various areas of actuarial practice the appropriate procedures, techniques, and approaches, thereby enhancing the public's trust in the credibility and completeness of the actuarial work product.*
- *Providing a means by which the many separate elements that make up actuarial practice can be reviewed and updated on a regular basis, so that practice remains current.*
- *Furnishing criteria for evaluating actuarial work products.*
- *Providing a basis for discipline in those instances in which standards are not adhered to.*

For individual actuaries, standards confer major benefits as well, by:

- *Providing guidance, particularly in practice areas that may be somewhat unfamiliar.*
- *Giving strong evidence to any interested observer that the profession serves the public in an effective and responsible way.*
- *Offering evidence of appropriate professional performance, which constitutes a defense in any civil or professional disciplinary action.*

Standards of practice also serve to further assure regulatory authorities that they can depend on the actuarial profession to act effectively in the public interest. Written standards of practice, coupled with written provisions for disciplining members, show that a profession governs itself and takes an active interest in protecting the public.”

General Observations

Fourth, again, before addressing the specific questions, I would like to set forth the primary concerns and objectives I would have for any changes in the ASOPs or other components of professional actuarial practice as follows:

1. Actuaries take pride in being professionals but most push hard against the idea of being fiduciaries or of being decision makers. Even if it is appropriate that actuaries retain the traditional role of being advisors, it may not be consistent with being considered professionals to offer advice that is ignored, watered down or otherwise not followed without some requirement on the part of the actuaries as advisors to raise an alarm.
2. Most actuaries work in areas that involve significant regulation where actuarial practice is constrained and key decisions are geared toward the protection of the ultimate beneficiaries of that practice. For actuaries working on Public Plans, there is less, or sometimes no, real regulation or constraint on actuarial practice.
3. The services of most Public Plan actuaries are provided to agents (in an economic sense) where the ASOPs would currently allow actuaries to consider these entities (e.g. Boards of Trustees to Public Plans) to be Principals (i.e. they pay the bills and receive the advice and reports). Given the ultimate payers and risk takers of most Public Plans can often be the Plan participants (whose benefits and member contribution requirements could be at risk) and are almost always the taxpayers (even unborn taxpayers) who must pay the bills, there may be a need to go beyond the requirement of existing ASOPs to protect those for whom the actuarial services are ultimately impacting (i.e. the Principals).
4. In effect, for most Public Plans, there is no “Policeman” to ensure that good actuarial practice and decision making based thereon occurs. While it may be presumptuous of the actuarial profession to attempt to fill this role, it may also be a dereliction of duty to do otherwise.
5. Thus, my main theme in responding to this Request for Comments is to ask the ASB to consider this larger question of what role should a profession play to protect the ultimate beneficiaries and obligors of the work being provided. I think it may be time, at least with respect to Public Plans, to ask the actuarial profession, via ASOPs promulgated by the ASB, to step into the role of Policeman to protect both the actuarial profession and, more importantly, those who rely on actuarial work.

Responses to Specific Questions

Finally, therefore, following are responses to the specific questions posed:

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 give advice on funding levels. Is additional guidance needed, beyond that in the recently revised pension ASOPs, regarding appropriate public plan actuarial valuation practice to assist actuaries in performing their work and advising their principal? Why or why not?

As noted in the Introduction, I believe that additional guidance is needed. The recently-revised pension ASOPs have improved the situation but may not gone far enough to meet the specific concerns involved with actuarial practice as applied to Public Plans.

Some of the reasons for additional guidance are set forth in the Introduction. Expanding further, please note the following:

- a. Principals versus Intended Users: As noted earlier, the actuarial terminology for these definitions do not necessarily capture the economic or plain-language meanings of the Public Plan environment. Most Public Plan actuaries would define their Principals and Intended Users as Boards of Trustees. Economically, the Boards of Trustees are agents, working on behalf of the real Principals (e.g. taxpayers) who should be at least part of the Intended User group.
- b. Legal and Regulatory Structure: As not all Public Plans are governed by clear-cut, strong funding requirements, there is a tendency on the part of agents (e.g. Boards of Trustees) to seek balance in determining Plan Sponsor funding obligations. That balance, where many members of the Boards of Trustees represent either budget-minded Plan Sponsor representatives (whose choices for spending usually lie elsewhere) or labor representatives (whose active members often prefer immediate salary increases and vote for those who represent them), is often tilted in favor of “pay later”.

- c. Human Nature: I am not aware of any politician running on a platform calling for increased funding to the Pension Plans. Public Pension Plan legacy costs are a “soft debt” in that the bondholders will not foreclose if you miss one payment. It is a major challenge to all concerned, therefore, to support Public Pension Plan funding in a governance world of multiple competing interests (e.g. Police and Fire protection, education, sanitation, etc.). When things need to be cut or increases in obligations must be deferred, Public Pension Plans often have a difficult time competing with other governmental needs.
- d. Actuarial Obligations: Regardless of the legal or regulatory structures (and some of these make it virtually impossible to achieve proper Public Pension Plan funding), actuaries currently have few, if any, professional requirements to bring poor funding status and/or reasonably-anticipated funding difficulties to the forefront except, maybe, to the assumed Principal. Consequently, the universe of Stakeholders (including the public at large) are often unaware of the situation until some other, usually outside entity (e.g. bond-rating agency) highlights the situation.
- e. Public Plan Actuaries: Collectively, Public Plan actuaries are the defenders of Public Pension Plan funding. The actuaries offer advice to those who decide but, often, it appears that the desire to please the Client (i.e. the apparent Principal) leads to providing relatively optimistic assumptions and/or agreeing to support (or, at least, not object to) actuarial assumptions and/or methodologies that defer obligations well beyond the ideal of Intergenerational Equity. Currently, the actuaries have a limited arsenal with which to defend against a potential “race to the bottom”.
- f. Risk: While the ASB is looking to provide an ASOP and further guidance on Risk, it is the risks of not meeting the assumptions that has led to many of the current Public Pension funding concerns. Current actuarial practice demands little by way of Risk analysis and even less by way of disclosure beyond the perceived Principal. It is unfortunate that actuaries, who are generally the most knowledgeable about the financial situation of Public Pension Plans, are not able or willing to sound the alarm when all Stakeholders should be concerned.

Question #2: If yes to Question #1, in what areas is additional guidance needed?

The primary areas where additional guidance is needed are the following:

- a. To whom does the actuary owe responsibility? The current actuarial definition of Principal and Intended User do not appear to incorporate the economic and lay person definitions. The Stakeholders of Public Pension Plans are many and all deserve an opportunity to know more about the status of the Plans than is currently typical.
- b. What level of Disclosure is appropriate? Actuaries should provide that level of disclosure that provides the various Stakeholders with what they need to evaluate the financial status of the Plans. While a Board of Trustees may need only a modest amount of information to fulfill their prescribed functions, most such Boards of Trustees would benefit from more disclosure on the financial status of their Plans and more discussion of the Risks that could potentially impact them and other Stakeholders. In addition, those other Stakeholders would benefit from a variety of disclosures that could impact their interests, as well as information on Risk that might matter more to them than to the actuarial definition of Principal. The actuary should be professionally bound to provide a level of information sufficient to help all Stakeholders better understand the financial status of the Plan, even if that information goes beyond what is required by law or governmental accounting standards.

Question #3. If yes to Question #1, should that guidance take the form of a separate public plan actuarial valuation standard or be incorporated within the existing ASOPs? Why or why not?

I believe a separate Public Plan actuarial valuation ASOP is necessary.

I would prefer that this not be the case. In an ideal world, the particular needs of ASOP requirements for Public Plans could fit within the existing ASOP structure. However, I do not see how this could be as easily accomplished as creating a new ASOP.

Question #4: In general, the ASOPs are principles based and not rules based. As a result, the ASOPs are generally not highly prescriptive. Should the ASOPs related to public plan actuarial valuations be more prescriptive? If so, in what areas?

I fully support principal-based ASOPs.

That said, in the case of a Public Plans ASOP, much may need to be somewhat prescriptive if it is to achieve the desired impact. If it is to be effective, a Public Plans ASOP will need to contain provisions that appear (and may actually be) compulsory, effectively substituting for non-existent laws or regulations, and placing the actuaries in the role of Policeman.

While this may be at complete odds with the historical role played by actuaries, someone has to take responsibility to make clear the financial situation so that those who do govern either follow the advice of the actuaries or deal with consequences of the public fishbowl.

Question #5: The ASOPs have provided guidance that has been applicable to all areas of practice in the pension community (for example, private sector, multiemployer and public sector). If you believe that additional guidance is needed for public plan actuarial valuations, should any of that additional guidance also apply to nonpublic sector plans? Why or why not?

I generally favor ASOPs that provide consistent guidance across all areas of practice within the pension plan community.

My support for a stand-alone, Public Plans ASOP does leave open a concern that there either may be a need for a similar ASOP, or stronger references within existing ASOPs, to Multiemployer Plans, many of whose financial situations are somewhat similar to those of many Public Plans. Regardless, the needs for actuarial guidance on Public Plans are so great now that the needs of Multiemployer Plans should wait, unless they could somehow be built into a Public Plans ASOP quickly and easily.

This is why it would be great if the goals and directives of a Public Plans ASOP could be woven into the existing ASOP structure, thereby capturing the essential needs of the Public Plans and, where similarly applicable issues arise, Multiemployer and other plans as well.

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?

In a word, yes.

If the actuarial profession is to adequately serve the public, as well as its Clients, with respect to Public Pension Plans, it may have to ask more of its practitioners and its Clients. If Clients have only what they want and do not have other information that could be of value to them (of which they may not even be aware) and do not have other information that would clearly be of value to other Stakeholders, then they and the other Stakeholders may not be receiving a proper level of professional advice.

Thank you again for seeking input on these important topics impacting the role of actuaries in providing professional services to Public Plans.

Yours truly,

Robert C. North, Jr.