



September 9, 2014

Mr. David Bean
Director of Research and Technical Activities
Governmental Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: Project No. 34-1E

Dear David:

On behalf of the National Association of College and University Business Officers (NACUBO), we submit the following comments on the Exposure Draft (ED) of the Governmental Accounting Standards Board (GASB), "Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions." NACUBO's comments on the ED were developed with input from member institutions and our Accounting Principles Council (APC). The APC is comprised of experienced business officers from both independent and public colleges and universities.

NACUBO is a nonprofit professional organization representing chief financial and administrative officers at approximately 2,500 colleges and universities. In its capacity as a professional association, NACUBO develops accounting and reporting guidance for the higher education community and offers professional development for college administrative professionals on a wide array of financial management and reporting topics.

We value the extensive time and effort that the Board and staff have devoted to this project. We appreciate a due process document that is easily understood because it parallels GASB's pension requirements and we look forward to testifying at the public hearing on September 12.

Although highlighting the risks and magnitude of possible OPEB is important, NACUBO believes that there are additional issues related to OPEB that must be considered for employers that participate in state sponsored plans.

NACUBO has opinions about OPEB and the difference between OPEB and pensions, but we do not consider ourselves experts in this area. Briefly, what we will say is that:

- The most common type of OPEB is health insurance and health insurance does not accumulate in value to the individual over an employment period as a defined benefit pension does
- All eligible individuals pay a portion of the current period benefit expense and the benefit costs are influenced by competitive market variables in a way that promised quantities of

pension benefits are not; health insurance premiums have not tracked in a reliable way with inflation or cost of living indexes. The true future expense to private and governmental employers is very difficult to measure. Although accounting measurements and amounts recognized are commonly based upon estimates, many experts believe that future health care cost estimates are fundamentally a much less reliable measurement.

- Except for states that have opted out of the federal Medicare program, the benefit may not be legally binding – consequently Concepts Statement 4 defines the notion of a moral obligation. However, we think that a moral obligation is subject to interpretation as the benefit does not relate to livelihood. Subsidized healthcare is now available to everyone as a result of the Affordable Care Act and at the age of 65, retirees are eligible for Medicare and supplemental insurance.
- When access to postemployment healthcare is not offered, there is no accounting measurement requirement to accrue an estimate of the value of health insurance costs to current employees, based upon estimated workforce needs or career spans. As such, we question why health insurance costs cannot continue to be recognized based on current rates, period decisions about plan types offered, decisions to exclude non-current employees from the health care pool, or perhaps decisions to provide a subsidy to non-current employees to assist with health insurance purchases.

As a result of our aforementioned opinions, we ask the Board to spend more time examining the constructive notion of OPEB, especially given the current regulatory environment. We regret that constituents were not able to raise a myriad of examples of unique OPEB and healthcare structures and arrangements through the use of a Preliminary Views due process document.

The most significant aspects of the proposal that our comments focus on relate to accounting constructs and are the:

- Employment exchange for employers participating in multiple-employer cost-sharing defined benefit OPEB plans
- Concept of a collective liability

Employment Exchange

The vast majority of employees at public institutions who are eligible for OPEB will receive benefits because their public institution employer is part of their state's multiple-employer cost-sharing plan. NACUBO research indicates that public institutions participating in state sponsored OPEB plans make regular payments for OPEB at the direction of their state government. Periodic decisions and alterations to the quality of the benefits offered to retirees are made by state governments, plans that administer both pensions and OPEB, or OPEB plans or administrators.

GASB Concepts Statement 4, paragraph 19 states that “sometimes a liability will be created, not because it is legally enforceable, but because of a government’s actions or conduct.” Paragraph 19 notes that healthcare benefits, the most common type of OPEB, are a common example of a constructive liability. Public institution employers that participate in state sponsored OPEB through a multiple-employer cost-sharing plan (trust or other arrangement) do not legally or constructively control the promise of OPEB to their employees – they are required to offer the state benefit to their employees and typically cannot opt out of offering the benefit. NACUBO’s research indicates that employees at cost-sharing public institutions who are eligible for OPEB, know that they

are eligible to receive state sponsored benefits. Paragraphs B23 and B37 of the ED explain that a constructive liability must be based on “the understanding by employees that there is a promise of a benefit to be received in the future.” If the employee understands that they are receiving a state benefit, we believe the constructive liability belongs to the state offering the benefits, not to the cost-sharing employer. There is no employment exchange on which to base the liability. Perhaps a cost-sharing employer could add an addendum to employment paperwork clarifying that the “state retirement system or state governing body will periodically decide to offer state chosen OPEB to eligible retirees.” Would or could such a statement support or justify that the employee’s understanding is that they are eligible for a state benefit?

In addition, we believe that the Board’s employment exchange decision is weakened by conclusions concerning “special funding situations.” (Special funding situations are covered in various paragraphs throughout the ED, but the requirements are introduced in paragraph 17.) If the employment exchange is absolute and unwavering and, as such, is the basis for recognition and measurement, it is unclear what the conceptual reasoning behind exemptions for “special funding situations” is. Special funding situations that meet the requirements in paragraph 17 reduce the employer’s OPEB recognition requirements. We do not follow the logic that one entity’s obligation to make OPEB contributions diminishes the employment exchange. How (logically) does the non-employer entity’s contributions and benefit payments diminish the “exchange promise conclusion” reached for cost-sharing employers that do not have special funding situations? We would expect the Board to reach the same conclusion for a public institution that is required by state law to participate in a multiple-employer cost-sharing OPEB plan when the public institution has no discretion over the contribution amount, can’t opt out, can’t relieve its liability, and is not involved in administering OPEB on behalf of retirees.

To reiterate, public institution employers that participate in multiple-employer cost-sharing plans offer their employees **access** to OPEB that is sponsored by their state. The promise is **access in exchange for employment service**. We struggle to understand the Board’s reasoning behind changing well documented and logical past positions that acknowledged the differences between cost-sharing and sole and agent employers. The Board unequivocally concluded in Statements 27, 45, and Technical Bulletin 2004-02 that the obligations of employers participating in cost-sharing plans differ significantly from those participating in single-employer or agent plans. For more than 15 years, the Board held that:

1. Any obligations of employers in a cost-sharing plan are not directly attributable to individual employers
2. The employer’s obligation is fulfilled by paying contractually required contributions
3. Employers have little or no control over the amount of the required contribution or how it is determined
4. Any attribution to an individual employer would be arbitrary because benefit calculations are not unique to any one individual employer
5. If recognition of a liability were required for cost-sharing employers, the employer would have no means (or justifiable means) of paying it

Higher education is an industry that has both private and governmental institutions. As a result, about half of NACUBO member institutions follow accounting guidance put forth by the Financial Accounting Standards Board (FASB), and the remaining half follow GASB guidance. Because we are an industry that is split between FASB and GASB, we pay attention to decisions for similar transactions that are reached by both standard setting bodies. Recent NACUBO interviews with Board Chairs and conversations with the Financial Accounting Foundation have assured us that there is a desire for careful examination of disparate conclusions reached by the Boards for similar transactions. We urge GASB to carefully examine the reasoning behind different conclusions reached by FASB for multiple-employer cost-sharing benefit plans.

In light of discussion and questions raised in the preceding paragraphs we urge the Board to reexamine conclusions reached based upon the employment exchange and soundness of liability recognition for employers that participate in multiple-employer cost-sharing plans.

Collective Liability:

The liability that cost-sharing employers, without special funding situations, are required to recognize is a liability for their proportionate share of the net OPEB liability (of all employers for benefits provided through the OPEB plan)—the collective net OPEB liability. Concepts Statement 4 does not address collective liabilities. We are distressed that there is no conceptual foundation in GASB’s literature for a collective liability.

Because a collective liability is not addressed in Concepts Statement 4, we must analogize to examine its rationale. In doing so, we fail to see how recognizing a pro-rata share of a collective liability meets the definition of a governmental entity’s obligation or liability per Concepts Statement No. 4, paragraph 18, which states that:

“An obligation is a social, legal, or moral requirement, such as a duty, contract, or promise that compels one to follow or avoid a particular course of action. A present obligation that is a liability is a **duty or responsibility to sacrifice resources that the government has little or no discretion to avoid** (emphasis added). The reason that many liabilities cannot be avoided is that they are legally enforceable, meaning that a court could compel the government to fulfill the obligation. Generally, legally enforceable liabilities arise from legislation of other levels of government or contractual relationships, which may be written or oral.”

Public higher education institutions that participate in multiple-employer cost-sharing plans do not have a legal obligation beyond their required contractual contribution. NACUBO cannot find an example of a state law or a triggering event that would require a public institution to pay OPEB beyond any contractually-required contributions. Further, a court could not compel a public institution to fulfill an obligation beyond contractual limitations without a change to state law. Consequently, the “legally enforceable” and “no discretion to avoid” tests have not been satisfied for public higher education institutions that participate in multiple-employer cost-sharing plans.

Finally, we are concerned that the proposed effective date provides insufficient time to address all implementation complexities. We do not believe that employers were

adequately represented in the field tests, consequently we fear that unexpected issues may surface during implementation.

We wish to express our appreciation for the opportunity to comment. We look forward to answering any questions the Board or the staff may have. Please contact me at 202-861-2542 or sue.menditto@nacubo.org.

Sincerely,

Susan M. Menditto
Director, Accounting Policy