September 27, 2019

Director of Research and Technical Activities
Governmental Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

RE: Project No. 3-33 IRC Section 457 Deferred Compensation Plans That Meet the Definition of a Pension Plan and Supersession of GASB Statement 32

Dear Board and Staff:

The Ohio Public Employees Retirement System is pleased to have the opportunity to respond to the Governmental Accounting Standards Board (GASB) Exposure Draft (ED) document on "Internal Revenue Code Section 457 Deferred Compensation Plans That Meet the Definition of a Pension Plan and Supersession of GASB Statement 32". We have the following comments for the Board to consider as it finalizes this statement.

Proposed Considerations Regarding the Exposure Draft

- Definition of a Pension Plan

Paragraph 4 of the exposure draft provides guidance in identifying Section 457 plans that meet the definition of a pension plan. This paragraph refers to the definition of a pension plan in the glossaries of Statements 67 and 73, where there are several types of pension plans defined. Appendix B, paragraph B6 provides further guidance, stating that the presence of employer contributions to a Section 457 plan indicates a retirement benefit in the form of retirement income is being provided, causing the Section 457 plan to meet the definition of a pension plan. It further states that if only employees contribute to a Section 457 plan that otherwise would meet the definition of a defined contribution pension plan, the government is not providing a benefit and the Section 457 plan would not meet the definition of a pension plan.

There may be situations in which an employer is allowed to contribute, based on the plan documents, but makes that determination voluntarily and may discontinue providing employer contributions at any time. As an employer that pays matching dollars into a 457 plan, we do not segregate the match from the employee contribution; rather, the employer match is classified as employee earnings and added to the employee tax deferred deduction – both contributions are transferred as a singular contribution for the employee to the 457 plan (there would be no distinguishing between employer match and employee contribution into the plan). Based on this treatment, these would not qualify as employer
contributions. Additionally, employers may already have a primary pension plan they are required to pay into and are reporting in accordance with GASB Statement No. 68. The 457 plan is supplemental and at the sole discretion of the employees to participate in the plan. Please consider providing the intended definition of a pension plan directly within the standard, with clarification for the proper treatment of situations where the 457 plan is a supplemental plan and is voluntary for both the employee and employer. Under these circumstances, we do not believe the 457 plan should meet the definition of a pension plan.

Additionally, please consider whether any other factors, such as immediate 100% vesting of employees' funds (both member and employer contributions) in the Section 457 plan account (457 plans typically do not track employer contributions due to the immediate vesting), lack of employer control over the assets and investment options selected by employees, and retirement income being dependent on the performance of the investments selected by the employee, would affect whether the employer contributions are characterized as a retirement benefit or current wages which the employee defers. Please consider including this guidance in the body of the standard, rather than as background material due to its significance.

- Fiduciary Reporting

Paragraph B3 makes reference to Statement 84 regarding fiduciary reporting requirements for Section 457 plans. Please consider including guidance specific to fiduciary reporting as it relates to Section 457 plans within the body of this standard to provide further clarity.

We appreciate the opportunity to comment on the Exposure Drafts. Questions may be directed to Jennifer Starr, Director - Finance at 614-227-0059, or to Erica Worley, Assistant Director – Financial Reporting at 614-225-7899.

Sincerely,

Jennifer H. Starr, CPA
Director-Finance, OPERS