September 27, 2019

Mr. David R. Bean
Director of Research and Technical Activities – Project No. 3-33
Governmental Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Delivered Electronically

RE: Response to GASB Exposure Draft – Internal Revenue Code Section 457 Deferred Compensation Plans That Meet the Definition of a Pension Plan and Supersession of GASB Statement 32

Dear Mr. Bean:

The National Association of Government Defined Contribution Administrators (NAGDCA) appreciates the opportunity to provide input on GASB’s Exposure Draft – Internal Revenue Code Section 457 Deferred Compensation Plans That Meet the Definition of a Pension Plan and Supersession of GASB Statement 32 (Project No. 3-33).

Founded in 1980, the National Association of Government Defined Contribution Administrators (“NAGDCA”) is the leading professional organization of public employer-sponsored deferred compensation and defined contribution plan administrators. NAGDCA’s mission is to support plan sponsors and service providers of government-sponsored deferred compensation and defined contribution retirement plans in creating successful retirement security outcomes for their plan participants. NAGDCA governmental members oversee plans for participants from 60 state and territorial government entities and 146 local government entities, including counties, cities, public safety agencies, school districts and utilities. NAGDCA’s members administer governmental deferred compensation and defined contribution plans, including Section 457(b), 401(k), 401(a), and 403(b) plans (“DC Plans”), which provide for employee and employer contributions. The association provides a forum for working together to improve DC Plan operations and outcomes by sharing information on investments, marketing, administration, and the federal laws and regulations governing DC Plans.

NAGDCA Supports Improved Standards and Educating Stakeholders

Specifically, regarding the Exposure Draft, NAGDCA recognizes that:
The Governmental Accounting Standards Board (GASB) is responsible for (1) establishing and improving standards of state and local governmental accounting and financial reporting to provide useful information to users of financial reports and (2) educating stakeholders—including issuers, auditors, and users of those financial reports—on how to most effectively understand and implement those standards.¹

As the leading professional organization in the field, NAGDCA considers itself a subject matter expert on governmental 457(b) DC Plans and would very much like to partner with GASB in its goals of improving standards for accounting and financial reporting on governmental 457(b) plans and educating stakeholders. We believe these objectives are important. NAGDCA also believes these efforts require careful consideration both to ensure intended enhancements are achieved and to avoid any misunderstanding or incorrect characterization of governmental 457(b) DC Plans.

This is also particularly important in light of GASB’s recognition that increased reporting would create additional cost expenditures and that there needs to be “an appropriate balance between maximizing benefits and minimizing costs.” To support NAGDCA’s mission of creating successful retirement security outcomes for DC Plan participants, the goals and enhancements supported by additional reporting should be further considered in light of the increased cost expenditures. Additional reporting that does not provide real enhancements but unnecessarily increases costs should be avoided.

Accordingly, we greatly appreciate the opportunity to provide important and additional perspective for your consideration on this matter and the proposed Statement.

**NAGDCA Requests Additional Clarification and Consideration of Defining 457(b) Plans as Pension Plans**

Per the Summary of the Exposure Draft, “The primary objective of this proposed Statement is to enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.” (Italics supplied.)

More specifically, NAGDCA requests that GASB further consider the Exposure Draft’s defining 457(b) plans as “pension plans” and consider further what types of governmental 457(b) DC Plans would be considered “pension plans” to which additional accounting and financial reporting would be required.

NAGDCA represents many different governmental 457(b) DC Plans, which have varying features and designs. In general, the concept of what is considered “employer contributions” by the IRS is nuanced and worthy of careful review. All contributions, whether deducted from the participant’s paycheck or put in by the employer on top of salary, are considered by the IRS to be

¹ See, GASB Exposure Draft “Notice to Recipients” on page ii.
deferred compensation and are treated as salary under IRC section 457(b) (e.g., subject to Social Security and Medicare (FICA) tax). All amounts are elective deferrals, subject to the deferral limit ($19,000 in 2019). They do not have "employer contribution" status. By far most governmental 457(b) plans include only employee elective contributions. Whether or not these governmental 457(b) DC plan sponsors make additional contributions, the plans are generally considered “defined contribution plans,” meaning that the benefit received by participants is based on the contributions made, and earnings received, on those contributions, without additional risk to the employer for gains or losses on the plan’s investment options.

GASB Statements 67 and 68 define Pension Plans as “Arrangements through which pensions are determined, assets dedicated for pensions (if any) are accumulated and managed, and benefits are paid as they come due.” These Statements also provide for “…accounting and financial reporting for pensions that are provided to the employees of state and local governmental employers through pension plans that are administered through trusts that have the following characteristics:

- Contributions from employers and nonemployer contributing entities to the pension plan and earnings on those contributions are irrevocable.
- Pension plan assets are dedicated to providing pensions to plan members in accordance with the benefit terms.
- Pension plan assets are legally protected from the creditors of employers, nonemployer contributing entities, and the pension plan administrator. If the plan is a defined benefit pension plan, plan assets also are legally protected from creditors of the plan members.”

Furthermore, these GASB Statements define Defined Contribution Pensions as “Pensions having terms that... (b) define the contributions that an employer or nonemployer contributing entity is required to make (or the credits that it is required to provide) to an active employee’s account for periods in which that employee renders service.”

Yet, paragraph B6 of the Exposure Draft summarily concludes that employer contributions to a Section 457(b) plan may cause the plan to meet the definition of a pension plan.² (Paragraph B7

² Appendix B, Paragraph B6 of the Exposure Draft provides:

... the Board believes that for a Section 457 plan in which the amount received by the employee in retirement is based solely on the amounts accumulated in the employee’s account during active service, the presence of employer contributions during the employee’s active service period demonstrates that a benefit—in the form of retirement income—is being provided by the government and, therefore, that such a Section 457 plan meets the definition of a pension plan. The Board acknowledges that based on the pre-agenda research, Section 457 plans to which employers make contributions are a subset of all Section 457 plans and that there continue to be many Section 457 plans to which only employees contribute.
of the Exposure Draft also acknowledges that Section 457(b) plans that meet the definition of a pension plan generally are defined contribution pension plans.)

We appreciate that GASB is seeking to recognize the changing landscape of governmental 457(b) DC Plans, including the ability of employers to make contributions to these plans. However, it is quite rare for an employer to contribute to a 457(b) plan which is usually a supplemental plan. NAGDCA’s benchmarking survey for 2018 found 51 of 63 responding plans were supplemental to a defined benefit plan.

We also understand that GASB’s pre-research survey attempted to further understand whether Section 457(b) Plans have “Defined Benefit” characteristics. Per the October 15, 2018 Memo provided to the GASAC members (see attached), under “Initial Issues Raised by the Research” on page 4, the memo states:

**Section 457 Plans with Defined Benefit Characteristics**

The survey asked two questions that sought to ascertain whether Section 457 plans are more akin to defined contribution plans or defined benefit plans. The first question asked whether the amount that a plan member will receive at retirement is dependent on only contributions to the plan and earnings on investments of those contributions. All but a relative few respondents thus far have answered yes, indicating their Section 457 plans do not have that defined benefit characteristic.

The second question asked whether the government retains any risk associated with gains or losses on investment options offered by the Section 457 plan. Virtually every respondent thus far has answered no, indicating their Section 457 plans do not have that defined benefit characteristic either.

The pre-research survey is illustrative of how 457(b) DC Plans typically do not have defined benefit characteristics. Therefore, NAGDCA would like to question why employer contributions alone would define whether a governmental DC Plan is a “pension plan” for this purpose, without regard to whether the governmental employer retains any risk on investment earnings.

Moreover, we urge you to further review how (and to what extent) employers may be making contributions and what impact those differences may have on financial and accounting reporting.

Regarding arrangements for which an employer or nonemployer contributing entity does not provide a benefit, the Board continues to believe that such arrangements do not meet the definition of a pension plan. For example, 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 (nor would amounts provided to employees through that plan meet the definition of pensions).
considerations. Employer contributions made to governmental 457(b) DC Plans are not a ‘one size fits all’ category and may not be indicative of whether a governmental 457(b) DC Plan is a “pension plan”. Rather, we expect these plans will reflect a spectrum of different plan designs that need to be better studied and understood (e.g., are the employer contributions mandatory, are employer contributions being made by only a de minimis number of employers in a multi-employer plan, are they reflective of a de minimis number of participants receiving employer contributions, etc.). We believe that further analysis of this topic is necessary and would be very beneficial for all stakeholders involved.

**NAGDCA Requests Additional Consideration of Additional Reporting Requirements**

NAGDCA also believes GASB should further review and consider to what extent the accounting and financial reporting requirements that are relevant to pensions should be applied to a Section 457(b) plan that meets the definition of a pension. Again, there needs to be “an appropriate balance between maximizing benefits and minimizing costs.” Further, governmental 457(b) DC Plans do not have the same financial risks or net exposure to the governmental employer as defined benefit plans. For that reason, NAGDCA would urge GASB to consider under what circumstances “All accounting and financial reporting requirements that are relevant to pensions should be applied”3 without regard to whether the plan is defined contribution or defined benefit and without regard to the different financial risks or net exposure to the governmental employer.

**Request for Meeting**

NAGDCA would like to propose a meeting to discuss these matters further and to determine how NAGDCA can best assist GASB in further development of these standards including to supplement any information previously provided by our members. NAGDCA offers the use of its annual benchmarking report entitled *Perspectives in Practice – A Benchmarking Initiative for Public Sector Defined Contribution Plans*.

NAGDCA wishes to partner with GASB and consult with you on these efforts toward better understanding and best determining how governmental 457(b) DC Plans are defined and characterized for the purpose of proposed accounting and financial reporting guidance that will apply to our members’ DC Plans.

Sincerely,

/S/
Sandy Blair
NAGDCA President
Director of Retirement Readiness
California State Teachers’ Retirement System (CalSTRS)

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