December 9, 2016

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

RE: Project 34-1E

This letter is in response to the Proposed Implementation Guide No. 201X-X (Project 34-1E). I have reviewed the Governmental Accounting Standards Board (GASB) Exposure Draft Proposed Implementation Guide No. 201X-X, Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans (ED) and am pleased to offer the comments that follow below. Though my comments are specific to GASB’s response to question 4.42 of this proposed OPEB Implementation Guide, the implications of these comments are meant to influence the GASB to reconsider its conclusion on this question before it mirrors the proposed guidance for pension purposes. The question posed is whether an irrevocable trust (Trust B) set up to accumulate funds which can only be used to provide resources to the trust (Trust A) which will be making benefit payments should be included as an OPEB plan asset when determining the plan’s net obligation. GASB’s response currently states that the assets of Trust B should not be reported as part of the OPEB plan.

In examining GASB’s response, I would like to provide the following thoughts for consideration:

- Paragraph 3 of Statement No. 74 describes the OPEB Trust requirements with respect to irrevocable contributions, dedication of assets for OPEB benefits, and the legal protections required for the dedicated assets. Any contributions to Trust B are by definition irrevocable, if the trust is an IRC 115 qualified trust. Once contributions are made to Trust B, the form and substance of those contributions are assets; and, since those assets are by definition legally protected and dedicated for use only for the provision of OPEB benefits the secondary Trust B meets all the requirements of paragraph 3 in Statement 74.

- The financial vehicles available for meeting all of the government’s financial obligations are few and leave little leeway as to how those obligations are funded. An irrevocable trust, like Trust B,
allows governments to take advantage of a financial vehicle that was created to encourage efforts to improve and advance the funded status of the overall OPEB plan. Disallowing the use of irrevocable trust for net OPEB obligation purposes eliminates an opportunity to address the poorly funded status of most OPEB plans throughout the country.

- One of the overarching goals of the guidance that the GASB provides is for purposes of providing the framework for prudent decision-making in government. The resources held in Trust B helps achieve this goal by reducing OPEB entity risk through trust diversification but only if it is includible in Net OPEB calculation and reporting.

- Governments are heeding the call for more aggressive prefunding of OPEB. According to Mitch Barker of PARS’s (Public Agency Retirement Services), California local governments have invested over $1.2 billion in IRC 115 OPEB trusts and almost $80 million in IRC 115 pension trusts. In some cases, the OPEB trusts are secondary trusts (Trust B) and all of the pension trusts are secondary trusts (Trust B). The advent of secondary OPEB trusts has had a positive response that is just now gaining momentum with governments that offer OPEB. I believe that the GASB proposed guidance on this question will only serve to stifle the momentum in addressing OPEB underfunding. The economic impact of the GASB’s current position on the use of secondary trusts will no doubt be negative if governments are prohibited from presenting their actual financial commitments towards addressing underfunded OPEB and by implication, pension trusts. It would seem to me that it would be in best interest of all stakeholders if the GASB would give more consideration to the multiple trust approach for OPEB plan prefunding before this proposed conclusion stands. The de-facto public policy implication of the proposed guidance is to discourage prefunding of OPEB. Thus putting retiree healthcare at greater risk. The GASB needs to answer the following questions, “Are stakeholders and end users of government financial reports being negatively misled with the inclusion or the omission of supplemental trusts in net OPEB calculations and reporting? And, are stakeholders fundamentally better or worse off for the inclusion or omission of supplemental trusts?”

- While it is the GASB’s role to provide standards that guide governments to present fairly the financial condition of their respective government; disallowance of financial vehicles such as Trust B for Net OPEB calculations and reporting distorts unfairly the reporting government’s actual financial commitment to addressing the costs of retirement.

- I believe the inclusion of irrevocable trusts should be allowed, at a minimum, for Plan Sponsor financial reporting and should be applied consistently for both OPEB and pension liability calculations.

With the reasons stated above in mind, I request that the GASB reverse their interpretation concerning the use of additional trusts for use in single-employer OPEB plan net OPEB liability calculations and reporting. My hope is that the GASB will conclude that the multiple trust approach
to prefunding retirement obligations should also apply to pension plan net pension liability calculation and reporting.

I wholeheartedly appreciate the opportunity to comment on these Exposure Drafts of the Implementation Guides.

Sincerely,

[Signature]

Joe Paul Gonzalez
County Clerk, Auditor & Recorder