



# FLORIDA GOVERNMENT FINANCE OFFICERS ASSOCIATION, INC.

Since 1937

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Dear Sir:

The Florida Government Finance Officers Association (FGFOA) is pleased to respond to the Government Accounting Standard Board's (GASB) Invitation to Comment on the Exposure Draft related to Fiduciary Activities (ED). These comments were prepared based on a review by the FGFOA members, its Technical Resources Committee, and the Board of Directors.

We agree that the ED is needed in that the existing standards are not explicit and there appears to be great variation in practice about identifying and reporting fiduciary activities.

The ED identifies four different types of potential fiduciary activities; pension and other employee benefit trust funds, investment trust funds, private purpose trust funds, and custodial funds. While all four of these categories are worthy topics, we believe that the greatest need for clarity is with pension and other employee benefit trust funds and have focused most of our response in that area.

One area of existing GAAP in this category is GASB Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, issued in 1997. The Statement primarily indicates that fiduciary funds are to be used to account for assets held by a government in a trustee capacity or as an agent for others.

This statement noted that the Board does not regard 457 plans as pension plans because there are no required contributions to the plans and also noted that most sponsors of 457 plans have little administrative involvement and do not perform the investing function for those plans. As a result of GASB Statement No. 32, most 457 plans that were previously reported as fiduciary funds were no longer reported as fiduciary activities in the financial statements of local governments. To this day, we see very few if any 457 reported as fiduciary funds.

The ED does not appear to amend or supersede GASB Statement No. 32 leaving us unclear on whether the criteria in the ED would still apply to 457 plans covered by GASB Statement No. 32 or not. Since the Board is undertaking this project and GASB Statement No. 32 is somewhat dated, we believe that the ED should include comprehensive guidance on all fiduciary activities, including 457 plans currently governed by GASB Statement No.

32, or explicitly state that GASB Statement No. 32 remains unaffected by it and why.

Also, since the criteria in the ED for determining if fiduciary activities exist appear to be different than those in GASB Statement No. 32, it would seem like a single set of criteria to apply to all situations would be preferable to two different sets of criteria.

In the current environment, it is apparent that 457 and 401(a) plans are taking on a more significant role than previously relative to defined benefit plans. As a result, some vendors and public plans are reexamining their responsibilities and beginning to adopt more widely recognized fiduciary best practices. Specifically, there is recognition that while 457 plan participants typically bear the cost and investment risk of their programs, only the employer can negotiate cost and approve the investment options made available to participants. These are typically thought of as fiduciary decisions, so clarification of these points is critical to allowing local governments and their auditors determine if these plans should be reported as fiduciary activities.

Additionally, the ED appears to define a pension plan as one within the scope of GASB Statement No. 67, *Financial Reporting for Pension Plans*. GASB Statement No. 67 appears to require employer contributions for a plan to be a “pension plan,” thus most 457 plans would not meet this definition and, therefore, would not be included within the scope of the statement, or are we looking at it too narrowly? More clarification is needed.

Moving on from the 457 plan issues, the ED appears to focus on at least two key criteria for inclusion of an activity as a fiduciary fund; control of assets and the existence of a trust. The ED states in paragraph 10 that control of the assets exists when the government holds the assets or has the ability to administer or direct the use, exchange, or employment of the present service capacity of the assets.

We find that beyond holding the assets, which is self-evident, the above definition does not provide the clarity needed to determine if a fiduciary responsibility exists. More guidance is necessary in some degree of further specificity of what is meant by “direct the use, exchange, or employment of the present service capacity of the assets.” For example, many local governments use prototype IRC Section 401(a) documents for their defined contribution plans. A review of some of the documents for this type of plan indicates that the record keeper or its affiliated trust company is the trustee and can offer the local government varying amounts of say in what specific investment alternatives are offered to the plan participants. Another popular vendor’s government plan and trust documents for both 457 and 401(a) plans state that “the trustee shall be the Employer or such other person that agrees to act in that capacity hereunder” when defining trust and investment accounts.

We would like the ED to provide further guidance as to whether it is critical that the local government is the trustee of the trust. Also, is there a critical difference between the local government having total, limited, or no say in the investment options offered? We are not sure how to apply the criteria of “has the ability to administer or direct the use, exchange, or employment of the present service capacity of the assets” in these or similar scenarios.

Clearly the local government selected the plan and entered into the agreement and could cancel it, which may mean that they “direct the use,” but trying to apply the guidance in the ED it is not clear at what point they become a fiduciary in such an arrangement. In that example, we believe this would be a fiduciary activity. Expansion of paragraph 10 would be helpful to accommodate this view. Perhaps some specific examples that would identify various arrangements and how the criteria would be applied.

In summary, we support the GASB addressing fiduciary activities in this exposure draft, but would like to see more specific guidance and clarifications contained in the final Statement as to how to apply the various criteria, especially in the area of employee benefit plans.

We would like to thank the GASB for its efforts in preparing the ED and for the opportunity to respond. Feel free to contact me at (407) 836-5719 or [barry.skinner@occompt.com](mailto:barry.skinner@occompt.com)

Sincerely,

A handwritten signature in blue ink that reads "Barry Skinner". The signature is written in a cursive style with a long horizontal flourish at the end.

Barry Skinner, CPA, CGFO, CPFO  
President