University of California
Governmental Accounting Standards Board (GASB) Statement No. 27, *Accounting for Pensions by State and Local Government Employers*

Issues Resolution Memo No. 27.4

(Issued May 21, 2007)

Financial Reporting for the University of California 415(m) – Restoration Plan (415(m) Plan)

Background

The University established a 415(m) Plan as of January 1, 2000, as a nonqualified pension plan to restore annual retirement benefits otherwise earned by and paid to members of the University of California Retirement Plan (UCRP) but which are limited by Internal Revenue Code (IRC) rules.

Generally, to participate in the Plan, an eligible employee must be a UCRP benefit recipient whose benefits are subject to the limitations set forth in the IRC § 415(b). Benefits under the Plan are payable in accordance with the benefit election made under UCRP, as follows:

- For a UCRP member who has elected a monthly retirement income option that is limited by IRC § 415(b), a separate payment will be made under the Plan. This payment will equal the difference between the earned UCRP benefit and the amount that can be paid from UCRP due to the IRC § 415(b) limit. The total benefit is recalculated each year based on cost-of-living adjustments. Capital Accumulation Provision (CAP) credits earned in UCRP are paid in a single payment under the Plan to the extent they are limited under the provisions of the Plan.

- For a UCRP member who has elected a Lump Sum Cashout (LSC) that is limited by IRC § 415(b), 120 equal monthly payments will be made under the Plan commencing from the LSC date. The sum of these payments will be actuarially equivalent to the difference between the earned LSC benefit and the amount that can be paid from UCRP due to the IRC 415(b) limit. The total benefit will be paid without cost-of-living adjustment. If the difference between the earned LSC benefit and the amount that can be paid from UCRP is $35,000 or less, at the commencement of participation in the Plan, then a single lump sum payment will be made under the Plan.

At June 30, 2006, Plan membership consisted of 122 retirees and beneficiaries currently receiving benefits.

The Plan's assets are held by the University. The assets are considered general assets of the University and are not held in a trust.

The Regents, as the governing Board, is responsible for the management of the Plan's investments and establish investment policy, which is carried out by the Treasurer.

The Plan is funded through actuarially determined assessments paid by the University or the United States Department of Energy ("DOE"), and administered by the University under contract with the DOE. Each University location is responsible for annually funding its share of the assessment. Over a period of years, the University and the DOE are required to make contributions to the Plan as determined by the Plan actuary, sufficient to fund the benefits and the actuarial liability.

The Plan is intended to be an exempt governmental deferred compensation plan under § 3121(v)(3) of the Internal Revenue Code of 1986, as amended, established solely for the purpose of providing to members of UCRP, their eligible survivors, beneficiaries and contingent annuitants that part of the annual benefit otherwise paid under UCRP that exceeds the limitations on benefits imposed by § 415(b) of the IRC.

On behalf of members, the Plan withholds taxes from the benefits paid and remits these to the appropriate taxing authorities. Taxes withheld but not yet remitted are reported as a liability of the Plan.

Define Issues

The question to be addressed is whether the plan is, in substance, a fiduciary plan, or whether there is specific guidance in the GASB literature that precludes treatment of this plan as a fiduciary fund.

If it is determined the Plan is in substance a fiduciary fund, then it may be appropriate to report the Plan's operating activity, assets, liabilities and net assets in the fiduciary funds section of the University's annual report and apply the provisions of GASB Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers*, to the Plan from the perspective of reporting for the University of California's financial statements.

If not, the appropriate treatment for reporting the 415(m) plan is to leave it within the University of California entity, not move it to the UC fiduciary funds section of the University's financial statements.

Conclusion

The 415(m) plan assets are not a formal trust, cannot be funded under the terms of the plan, and assets are available to the general creditors of the University.

Under paragraphs 69-72 of GASB 34, in the case of the 415(m) plan, it is apparent that the GASB would require the 415(m) assets to be in a formal trust in order to for fiduciary fund reporting. Therefore, the conclusion is to leave the 415(m) plan assets and activity in the University of California entity and treat the activity as a deferred compensation plan. The provisions of GASB 27 do not apply to the 415(m) plan.

Authoritative Guidance and Discussion

The following references apply to this discussion:

GASB Statement No. 34, Paragraph 69… "Fiduciary fund reporting focuses on net assets and changes in net assets. Fiduciary funds should be used to report assets held in a trustee or agency capacity for others and therefore cannot be used to support the government's own programs. The fiduciary fund category includes pension (and other employee benefit) trust funds, investment trust funds, private-purpose trust funds, and agency funds. The three types of trust funds should be used to report resources held and administered by the reporting government when it is acting in a fiduciary capacity for individuals, private organizations, or other governments. These funds are distinguished from agency funds generally by the existence of a trust agreement that affects the degree of management involvement and the length of time that the resources are held."

GASB Statement No. 34, Paragraph 70…."Pension (and other employee benefit) trust funds should be used to report resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other employee benefit plans."

GASB Statement No. 34, Paragraph 71…"Investment trust funds should be used to report the external portion of investment pools reported by the sponsoring government, as required by Statement 31, paragraph 18."

GASB Statement No. 34, Paragraph 72…"Private-purpose trust funds, such as a fund used to report escheat property, should be used to report all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments."

Next Steps—Required Actions

Responsibility (C, OP)	**Required Completion Date**	**Action Item/Task**
		None