

**Subject:** FPDR Board Written Public Comment for January 23

Director Hutchison,

I am submitting this written public comment in reference to the January 23, 2024 Board Materials, specifically a memo from outside counsel to the FPDR Board of Trustees titled "Evaluation of Concerns Raised in Written Comments Concerning Compliance with Actuarial Standards of Practice (ASOP) No. 4." under Information Item 1. This memo referenced public comments by me from the April 4, 2023 and May 23, 2023 FPDR Board meetings. In these public comments, I pointed out that a memo from staff to the FPDR Board of Trustees regarding an actuarial services contract was inconsistent with ASOP No. 4. I have read the memo from outside counsel and would like to respond with a few statements.

First, I stand by everything I said in my public comments.

Second, the memo from outside counsel states repeatedly that I have expressed concerns with a Revised Service Agreement between the City of Portland and Milliman. This is false. In fact, I have never expressed any concerns with this Revised Service Agreement in public or in private. To remove all doubt, I have read the copy of the Revised Service Agreement included in the Board Materials and can affirmatively state that I have no objections to it.

Counsel gives an opinion regarding the Revised Service Agreement. Compliance with professional standards is required both by the contract and by the actuarial profession; compliance is not optional or as the opinion acknowledges "it is Milliman's responsibility to perform Fund work in accordance with [professional standards]." Nevertheless, the opinion concludes that because the professional standard at issue "is binding only on actuaries, and not the FPD&R...any question concerning Milliman's compliance with ASOP No. 4 is a professional standards matter for Milliman to consider." In its introduction, the opinion goes further stating that because compliance with ASOP No. 4 is a professional standards matter, determining compliance is solely "for Milliman to resolve (with guidance from appropriate professional bodies, as determined necessary or appropriate by Milliman in its sole and complete discretion)," notwithstanding that the contract itself requires compliance with that standard.

Contracts that require performance (here compliance with professional standards) on one party (here Milliman) are not optional for that party because the counterparty is not contractually obligated to enforce the requirement. Were that so, almost all contracts of every sort would be unenforceable. Likewise, the Board is not helpless to enforce compliance with professional standards because the ultimate arbiter of what those standards mean is a professional body.

Third, I was pleased to learn that Milliman is planning to seek guidance from the Actuarial Board for Counseling and Discipline regarding whether the 2024 Levy Adequacy Analysis will be considered a funding valuation under ASOP No. 4, and therefore what professional standards and the Revised Service Agreement requires of them.

In conclusion, I commend the Board's vigorous pursuit of this issue, consistent with the prudent discharge of its duties.

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Opinions expressed herein reflect only the author's