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Copenhagen, DK

ELI J. DICKER
Executive Director

W. PATRICK EVANS
Chief Tax Counsel

February 10, 2016

VIA E-mail (director@fasb.org) and U.S. Mail

Susan M. Cosper

Technical Director and Chairman, Emerging Issues Task Force

File Reference No. 2015-340

Financial Accounting Standards Board

401 Merritt 7

PO Box 5116

Norwalk, CT 06856-5116

Re: File Reference No. 2015-340: Proposed Accounting Standards Update, Disclosures by Business Entities about Government Assistance (Topic 832)

Dear Ms. Cosper:

On November 12, 2015, the Financial Accounting Standards Board (FASB) released a proposed accounting standards update concerning disclosures by business entities about government assistance—Topic 832 (the Proposed Update). There is currently no specific GAAP standard for reporting the financial statement impact of government assistance received by business entities. The FASB is concerned about the diversity currently existing in the recognition, measurement, and disclosure of government assistance arrangements and believes a common standard for disclosing such information in the notes to financial statements could improve the information provided to users. Tax Executives Institute (TEI or the Institute) fully supports the FASB's efforts to improve the information disclosed in the notes to financial statements. We respectfully believe, however, the proposed amendments fall short of this objective. Accordingly, we are pleased to submit the following comments on the Proposed Update.

TEI Background

TEI is the preeminent worldwide association of corporate tax executives. Our nearly 7,000 members are accountants, attorneys, and other business professionals employed by approximately 2,800 of the leading

companies in North and South America, Europe, and Asia. TEI represents a cross-section of the business community and is dedicated to the development and implementation of sound tax policy and tax accounting principles, as well as to promoting the uniform and equitable enforcement of tax laws. The Institute is proud of its record of working with congressional committees, government agencies, and other policy-making bodies, including the Securities and Exchange Commission (SEC), the Financial Accounting Foundation (FAF), and the FASB on tax and tax accounting matters. These efforts inure to the mutual benefit of the government, business taxpayers, preparers and users of financial statements, and ultimately the public at large.

TEI members are responsible for conducting the tax and accounting affairs of their companies, ensuring compliance with the tax laws, and preparing financial disclosures of tax related matters. Most of the companies represented by our members issue financial statements governed by the FASB's pronouncements, and, of those, most are SEC registrants. For companies governed by other accounting standards, such as International Financial Reporting Standards, the FASB's work is also critical since FASB pronouncements are often referenced by other accounting standards' boards. In addition, they are subject to scrutiny by the Internal Revenue Service and various other agencies in the United States and foreign jurisdictions on a continual basis.

TEI, as a professional association of in-house tax executives, offers a unique perspective. Its members work for companies involved in a wide variety of industries, and thus, their collective perspectives are broad-based and not tied to any particular special interest group. Further, TEI members are responsible for both the tax affairs of their employers and the reporting of tax information in their employers' financial statements. Thus, they are well-versed in the complexities of the tax laws, as well as the financial accounting rules. We believe the diversity, background, and professional training of TEI's members place us in a highly qualified position from which to comment on the Proposed Update. Along with the government and the investing public, our members have the most at stake in trying to craft a financial reporting system that fairly presents the results of company operations and is as administrable and efficient as possible.

TEI Respectfully Disagrees that a Common Standard for Disclosing Government Assistance Arrangements Is Necessary or Appropriate.

Many different types of government bodies—national and local, foreign and domestic, developed and developing—offer discretionary incentive arrangements to commercial enterprises. The types of incentives vary widely, but all such programs share the common thread of using public funds to attract inbound investments and foster economic growth. The terms and conditions of government assistance agreements are established through private negotiations between companies interested in making capital investments and their government counterparties. Negotiations are competitive with both parties seeking the strongest results at the lowest possible cost, and multiple companies frequently bid for the same incentives.

Providing public funds or other benefits to businesses is an inherently sensitive matter. Government officials have traditionally been reluctant to publicly disclose information about their incentive packages to avoid public backlash from constituents who may disagree with policies underlying the incentive packages. Officials are also wary of setting a precedent other businesses could use against the government in future negotiations. Businesses have likewise preferred to keep the terms and conditions of incentive arrangements confidential out of concerns that their competitors could use the information to demand similar incentive packages, or other jurisdictions could use the information to establish a baseline of incentives a business is willing to accept for a given level of investment.

TEI is concerned that the public disclosures required by the Proposed Update would upset the sensitive negotiations that underlie government assistance agreements. If adopted, companies could use publicly disclosed information to the detriment of their government counter-parties and vice-versa. Governments may be reluctant to entertain negotiations with companies subject to the disclosure requirement, putting U.S. companies at a distinct disadvantage as compared to their non-U.S. competitors.

Thus, the very nature of discretionary government assistance makes it inappropriate to require public disclosure of material terms and conditions of these arrangements. Indeed, many different types of government assistance agreements within the scope of the Proposed Update routinely include confidentiality clauses, often at the behest of the government counter-party. Even when such clauses are absent from an agreement, the parties often have an expectation of nondisclosure under which terms and conditions of the agreement are guarded and disclosed only on an as-needed basis. A GAAP requirement to publicly disclose material terms and conditions of government assistance agreements would make it more difficult for companies to negotiate favorable terms with government officials, who would be understandably concerned about pressures to offer the same terms to similarly-situated companies. The chilling effect the proposed disclosure requirements would have on these negotiations far outweighs the limited benefit, if any, of public disclosure to users of financial statements. Accordingly, we disagree with the notion that a common standard for disclosing government assistance arrangements is necessary or appropriate.

Moreover, existing GAAP and SEC reporting rules already require extensive footnote disclosures concerning the effects of government assistance agreements on income tax matters.¹ These existing requirements provide the appropriate level of transparency related to income-tax-related government assistance. The overall costs to implement, maintain, and audit the new government assistance disclosures would outweigh the incremental benefits gained through the additional disclosures.

¹ See ASC 740-10-50-15A and SEC Staff Accounting Bulletin Topic 11: Miscellaneous Disclosures. See also Proposed Update at page 17, BCC8 (regarding overlap with ASC 740).

Finally, a fundamental aspect of the Proposed Update is it applies only to “legally enforceable” government assistance agreements. The concept of what is and is not enforceable does not translate easily into the laws and customs of some foreign countries, particularly when enforcement involves the government as a party to the contract. Even in situations where an agreement purports to be enforceable against a government, the costs and uncertainties surrounding litigating an enforcement action may render the agreement unenforceable as a practical matter. This is particularly true in developing countries whose legal systems are not as developed as that in the United States. This uncertainty would likely lead to material differences in how the “legally enforceable” standard is applied across multiple types of agreements and jurisdictions with differing legal concepts and regimes. The resulting diversity in disclosures would eviscerate the very objective the Proposed Update is attempting to achieve.

On balance, TEI believes the detriments the Proposed Update would cause far outweigh possible improvements to financial information provided to users of financial statements. We therefore respectfully request that the Proposed Update be withdrawn from consideration.

Responses to Select Questions for Respondents

Question 1: Do you agree that the scope of the amendments in this proposed Update should be limited to legally enforceable agreements in which an entity or entities receive value from a government? Do you also agree that the scope of the proposed amendments should not apply to transactions in which the government is (a) legally required to provide a nondiscretionary level of assistance to an entity simply because the entity meets applicable eligibility requirements that are broadly available without specific agreement between the entity and the government or (b) solely a customer? If not, what other types of arrangements should be included in or excluded from the scope of the amendments in this proposed Update? Explain why.

As set forth above, TEI respectfully disagrees with the notion that a common standard for publicly disclosing government assistance arrangements is needed and believes the detriments such rules would cause far outweigh possible improvements to information provided to users of financial statements. Nevertheless, to the extent new government assistance disclosures are ultimately adopted, we agree with the scope limitations expressed in Question 1, but also believe additional limitations are warranted. Governmental agencies, both domestic and foreign, have established a wide variety of programs to promote business development within their respective jurisdictions. These economic development incentive programs provide a variety of tax and nontax financial benefits not available without specific agreement. Enforceable agreements arising from such economic development programs are firmly within the scope of the Proposed Update.

Similarly, some countries attract inbound investment by granting a “holiday” from income taxes for a specified period. SEC Staff Accounting Bulletin Topic 11: Miscellaneous Disclosures (“SAB 11”), already requires financial statement disclosures of such arrangements, which would be swept within the scope of the Proposed Update as well if supported by an enforceable agreement.

The scope of the Proposed Update is extremely broad—a legally enforceable agreement with a government to receive *value*. This vague definition results in uncertainty as to whether a disclosure requirement would extend to agreements not traditionally considered to be “government assistance.” For example, it is unclear whether the settlement of a tax issue constitutes a *value* within the scope of the Proposed Update. Companies routinely enter into settlement agreements with tax authorities to resolve tax issues arising during the course of tax audits.² Such settlements may occur as part of an initial examination or audit, or as part of an administrative appeal or judicial litigation process. The settlement of a tax issue often occurs because the parties have a difference of opinion involving how and/or whether a statute, regulation, judicial opinion, or other type of tax rule applies to a particular set of facts.

Another example is when companies enter into tax ruling agreements with tax authorities. Similar to a settlement, a tax ruling is appropriate for issues involving how and/or whether a statute, regulation, etc. applies to a particular fact pattern. A common type of tax ruling is an advance pricing agreement (APA), pursuant to which a taxpayer and tax administrator agree on the transfer pricing for transactions undertaken between related parties. Tax rulings generally apply to future tax years for which a return has not yet been filed, but are sometimes “rolled-back” to returns filed in past tax years. The uncertainty as to whether these examples fall within the broad definition of a “legally enforceable agreement with a government to receive value” is concerning, and would likely lead to the same diversity of disclosures the FASB is trying to ameliorate through the Proposed Update.³

The taxpayer in the first example provided above is unlikely to view a tax settlement as an agreement in which a government is providing something of discretionary value. Rather, the taxpayer would think its reported tax position was correct, but it nevertheless chose to end the dispute through a settlement to avoid litigation. The government counter-party, however, may view the situation very differently as having exercised its discretion to provide a value in the form of a settlement to the taxpayer. The second example provided above of a tax ruling has similar uncertainty because a ruling can often involve differences of opinion as to the application of tax law. If the parties reach agreement and the government acknowledges the result in a tax ruling, the taxpayer may reasonably view the government as providing nothing more than a written acknowledgement of the outcome the taxpayer was entitled to in accordance with the tax law. The government counter-party, on the other hand, may view the ruling as providing the taxpayer a value in the form of resolving uncertainties associated with the tax position and avoiding future dispute.

² Tax positions in dispute in a tax audit may or may not constitute uncertain tax positions subject to the recognition and disclosure rules of subtopic ASC 740-10 *Uncertainty in Income Taxes*.

³ Concerns expressed on the prior page surrounding the determination of whether an agreement is or is not enforceable are particularly relevant in the context of tax settlement and ruling agreements. This added uncertainty would lead to yet additional diversity in disclosures.

If the FASB chooses to move forward with a requirement to publicly disclose details of government assistance agreements, which, as expressed above, we believe it should not, the FASB should eliminate the uncertainties identified above by specifically omitting tax settlement agreements and tax rulings from the definition of covered government assistance arrangements. Specific examples should be provided in the final guidance illustrating that a government is not exercising discretion to provide value when it enters into these types of agreements.

Question 3: Do you agree that the scope of the proposed amendments should not exclude government assistance agreements that are within the scope of Topic 740, Income Taxes? If not, explain why.

TEI respectfully disagrees with the position taken in the Proposed Update and believes all income-tax-related government assistance agreements should be excluded from coverage. The financial statement effects of such agreements are already covered by existing disclosure requirements under ASC 740 and/or SAB 11. The exclusion of income-tax-related agreements would eliminate the confusion arising from the same matter being addressed by two different accounting standards, as well as the significant time and resources that would be necessary to prepare additional disclosures that would add only marginal, if any, benefit to financial statement users.

ASC 740 provides comprehensive rules for reporting the effects of income taxes resulting from a company's activities. ASC 740-10-50-15A requires a tabular reconciliation of the total amount of unrecognized tax benefits at the beginning and end of the period along with disclosure of any material changes. Additionally, as discussed below, SAB 11 currently requires disclosures related to tax holidays. These existing disclosure requirements provide the appropriate level of transparency related to income-tax-related government assistance. The overall costs to implement, maintain, and audit additional disclosures required by the Proposed Update outweigh the limited disclosure benefits of potentially re-disclosing this information in a different format. As a result, the Proposed Update should exclude agreements within the scope of ASC 740.

In addition, the proposed scope of disclosure does not appear to align with International Financial Reporting Standards ("IFRS") contrary to assertions made in the Proposed Update.⁴ Specifically, IAS 20, Accounting for Government Grants and Disclosure of Government Assistance, *excludes* the following:

Government assistance that is provided for an entity in the form of benefits that are available in determining taxable profits or tax loss, or are determined or limited on the

⁴ The Proposed Update states, "the disclosures required by this proposed Update are consistent with those required by IFRS." Proposed Update at 3. This is simply incorrect.

basis of income tax liability. Examples of such benefits are income tax holidays, investment tax credits, accelerated depreciation allowances and reduced income tax rates.

In light of the FASB's commitment to convergence of U.S. and international accounting standards coupled with the existing SEC disclosure requirements, the Proposed Update should exclude agreements that are within the scope of ASC 740.

TEI also disagrees with the inclusion of government assistance agreements within the scope of SAB 11. SAB 11 requires companies that are granted a tax holiday to make the following disclosures in the notes to their financial statements:

- a description of the factual circumstances surrounding the tax holiday, including the date on which the special tax status will terminate;
- the aggregate dollar effect of the tax holiday; and
- the per share effect of the tax holiday.

While the term tax holiday is not defined in SAB 11, in practice, it has been interpreted to apply to arrangements with government agencies to reduce the statutory income tax rate for an exact period of time subject to certain requirements. SAB 11 adequately discloses the financial statement impact of the covered government assistance and should not be duplicated by the Proposed Update.

Question 5: Are the proposed scope and disclosure requirements operable and auditable? Do your existing information sets and systems, internal controls, and so forth capture the information required to be disclosed by the proposed amendments? If not, which aspects of the scope or disclosures pose operability, auditability, and/or cost issues and why?

The Proposed Update covers income based taxes, non-income based taxes, and non-tax related assistance. The scope of the Proposed Update is broad and will reach agreements and data which are not typically centralized and may be spread across many different departments, subsidiaries, and countries. The type of information required to be disclosed is not typically automated and will likely require considerable manual efforts and additional resources to implement. The completeness of the disclosure will necessitate the creation of new reporting throughout a company, as well as continual education of employees and executives in terms of the reporting requirement and internal processes to collect information. In many cases, government assistance agreements have long, multi-year terms. Thus, identification of all agreements in existence upon adoption of the standard will require significant company resources. These challenges are much greater in multinational companies, which must contend with differences in language, business customs, and legal concepts, as well as a variety of different types of interactions with government authorities. Overcoming these challenges to facilitate application of the standard to a given situation will require substantial commitment of company resources.

A company would also need to determine whether a government assistance agreement is legally enforceable when applying the Proposed Update. As already discussed, this is no easy task. The concept of enforceability is unclear, particularly across multiple types of agreements and jurisdictions with differing legal concepts and regimes. Making this fundamental determination in applying the standard would consume significant company resources and, in some cases, remain questionable and subject to interpretation.

Based on the foregoing, TEI does not believe the additional disclosure benefits to users are sufficient to warrant the extreme time, effort, and expense required to implement, monitor, and comply with the proposed common reporting standard for government assistance arrangements.

Question 7: For preparers, are there any restrictions (legal or otherwise) that exist in government assistance agreements that would preclude an entity (for example, confidentiality or proprietary reasons) from disclosing the information required by the amendments in this proposed Update? If so, specify what those restrictions are, whether they relate to foreign or domestic assistance, and which proposed disclosures cause concern and why.

As discussed above, it is common business practice for government assistance agreements, both foreign and domestic, to contain confidentiality clauses. The following text is an example of such a clause present in a tax agreement:

This Agreement is strictly confidential between the XXX, the Taxpayer, and the Taxpayer's authorized representative and shall not be made known to any other party except taxing jurisdictions with an information exchange agreement.

The proposed requirement to disclose significant terms and conditions of agreements containing confidentiality clauses concerns TEI members. It is inappropriate as a policy matter to require such disclosures, regardless of whether they address tax or nontax incentives. Governments rely on confidentiality clauses to protect their negotiating position with other similarly situated businesses. Governments may be reluctant to entertain negotiations with companies subject to the disclosure requirement, putting U.S. companies at a distinct disadvantage as compared to their non-U.S. competitors. Accounting standards should ensure the reporting of decision-useful financial results to investors and other users of financial reports. They should not drive the business decisions leading to the financial results, particularly in the case of government policies underlying the granting of financial assistance.

Requiring disclosure of significant terms and conditions of confidential tax settlements and tax rulings raises significant concern because it will have a deterring effect on taxing authorities in reaching similar agreements in the future. For example, when the terms and conditions of a tax settlement agreement become public, other taxpayers may pursue similar terms and conditions with the taxing authority. The disclosure required by the Proposed Update essentially becomes a public announcement of the taxing authority's position in a similar situation, even though the agreement is based on negotiations with a single taxpayer. As such,

taxing authorities may be less willing to reach a tax settlement or grant a tax ruling to a taxpayer, because the disclosure required by the Proposed Update would “open the door” for similar requests from other taxpayers.

Disclosures required by the Proposed Update may also result in proprietary information being disclosed to the public. APAs are examples of tax rulings that may be subject to disclosure under the Proposed Update. Such agreements involve supply chain, business processes, and other proprietary information that often times provides the requesting taxpayer a competitive advantage over its competitors. For this reason, APAs entered into by the U.S. Internal Revenue Service are considered confidential income tax return information under section 6103 of the Internal Revenue Code and are not subject to Freedom of Information Act disclosure. It would be bad policy to require a company that has expended the time and significant resources necessary to obtain an APA to disclose the terms and conditions of the APA to the public, thereby putting its proprietary company information at risk and allowing the company’s competitors to piggy-back off its efforts in obtaining the APA.

Recommendation

TEI believes the Proposed Update should be withdrawn because the detriments the proposed amendments would cause far outweigh the possible improvements to information provided to users of financial statements. The list below summarizes TEI’s expected detriments.

- Negative impact on negotiating positions of governments and companies.
- Government reluctance to entertain negotiations with companies subject to the disclosure rules, thereby putting those companies at a distinct disadvantage as compared to competitors not required to make similar disclosures.
- Introduction of an accounting standard that interferes with government policy decisions.
- Requiring the disclosure of information that is confidential, either contractually or as tax return information under the Internal Revenue Code, could create legal controversy.
- Uncertainties surrounding the scope of the proposed amendments (*i.e.*, when a government contract is *enforceable* and when it provides *value*) would lead to differing interpretations and diversity of disclosures.
- Confusion and added costs associated with having multiple reporting requirements (ASC 740, SAB 11, and the Proposed Update) that may apply to the same government assistance agreements.
- Divergence of the Proposed Update from international accounting standards.
- Significant costs of implementation, monitoring, and compliance.

If the Proposed Update is not withdrawn, the following types of government assistance agreements should be specifically excluded from the scope of the proposed amendments:

- Tax settlement agreements,
- Tax ruling agreements,
- All income-tax-related agreements (otherwise covered by ASC 740 and/or SAB 11), and

- Agreements containing confidentiality clauses.

TEI appreciates the opportunity to provide these comments, which were prepared by TEI's Financial Reporting Committee whose chair is Eric Johnson. Should you have any questions about the comments, please do not hesitate to contact Mr. Johnson at (925) 965-4536 or eric.johnson@ros.com or Patrick Evans of the Institute's legal staff at (202) 638-5601 or pevans@tei.org.

Respectfully submitted,
TAX EXECUTIVES INSTITUTE, INC.



C.N. (Sandy) Macfarlane
International President