



February 10, 2016

Russell G. Golden
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

**Re: File Reference 2015-340: Proposed ASU Government Assistance (Topic 832) –
Disclosure by Business Entities about Government Assistance**

Dear Chairman Golden:

Financial Executives International (FEI) is a leading international organization of more than 10,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior-level financial executives. The Committee on Corporate Reporting (CCR) is a technical committee of FEI, which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. The Committee on Taxation (COT) formulates statements/positions on tax legislation, policies, practices, rules and regulations, addressing economic/social implications of taxes, simplification and administration, and tax and accounting relationships, and communicates these to the executive and legislative branches of the government. This document represents the views of CCR and COT and not necessarily those of FEI or its members individually.

We appreciate the opportunity to provide our views on the proposed Update 2015-340. While CCR and COT are generally supportive of the FASB's efforts to provide increased clarity and consistency in accounting guidance where current guidance may be inadequate, CCR and COT are not convinced that there is an existing issue with government assistance that would require guidance in order to assist users' understanding of the existing financial statements and supporting disclosures of filers. We believe the scope of the project began as a recognition and measurement standard seeking to address inconsistency in the application of Generally Accepted Accounting Principles (U.S. GAAP) for unique transactions such as grants or tax abatements and quickly moved to disclosure. There are many areas of U.S. GAAP where prescriptive accounting does not exist and preparers are required to use the Concept Statements as their guide to apply a more principles-based view of the transaction.

In fact, we believe, the breadth and scope of the proposed Update as written would expand disclosures well beyond the existing requirements, increasing costs for preparers without a discernable benefit given the limited inquiries received from financial statement users.

Further, one of the proposed Update's stated goals is to provide financial statement users with information to analyze an entity's prospects for future cash flows related to government assistance. While we acknowledge that such information may be useful, we believe material changes in an entity's expectation about future cash flows are already adequately addressed through other existing disclosure requirements regarding risks and uncertainties. Under those disclosure requirements, if an entity is at risk of losing a significant government assistance agreement that would be material to their future operating results, that entity is already required to disclose such information.

We also believe that the proposed Update as written may be inoperable. Given the proposed Update's requirements to disclose specific terms and conditions of government assistance arrangements where the company has existing confidentiality provisions, companies would risk losing such assistance due to breach. Additionally, given the proposed Update's requirement to provide disclosures about value received from governments for which entities do not typically record directly within the financial statements, companies would need to implement new information systems and internal controls to track such transactions.

We recommend the Board conduct additional outreach or field studies to better understand the views of financial statement users. We also believe the Board should work with preparers to understand the existing population of material agreements in order to frame the problem that the Board is attempting to address through additional rule-making.

Refer below for our responses to the specific questions in the proposed Update.

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.

We generally do not support the scope of the amendments under this proposed Update. Companies enter into commercial agreements with third parties for a multitude of business activities, many of which do not have specific accounting guidance and require interpretation under broad standards. Companies must continually evaluate those agreements for potential impacts to their future cash flows, considering that some arrangements may be dissolved or re-negotiated. We view legally enforceable agreements within the current scope of this proposed Update as similar to any negotiated commercial arrangement. Current disclosure requirements do not require an entity to disclose only the benefits received from such arrangements. If agreements are material to the ongoing operations and future cash flows of the entity, the disclosures would include both the benefits received as well as the expenses incurred. We believe the scope, as written, does not contemplate the complex nature of many arrangements.

We agree that the scope of the proposed Update should be limited to legally enforceable agreements in which an entity receives value from a government. However if the project proceeds, we believe the scope should consider the following:

- Whether a legally enforceable agreement exists if a higher-level government is able to claw back or terminate the benefits (e.g., a federal government's right to claw back historical or terminate future benefits granted by a provincial government).
- Should value received be measured net of any costs the entity must incur in order to receive the benefits (e.g., if an entity must invest in local infrastructure in order to receive tax abatement)? The proposed Update's scope only applies to material agreements; therefore, the scope should be clarified to indicate whether value should be evaluated gross versus net of costs required to be incurred. Such costs may be equal to or even greater than the benefit received.

Also, while specific disclosure of impacts to an entity's financial statements specific to material legally enforceable agreements in which an entity receives value from a government may be useful, the disclosure, in and of itself, will not address the underlying issue of inconsistent accounting treatment for the individual contracts. If the Board's research and user outreach indicates a need for specific grant accounting guidance, we would support the Board's efforts to develop a more targeted recognition and measurement project focused specifically on grants and aligned with the scope of IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance* (IAS 20). We believe that moving directly to disclosure before solving the issues associated with

inconsistent accounting could actually lead to more confusion by users of financial statements given the broad set of transactions that could be included within the disclosure. Given the complexity of multinational corporations and the practices and disparity of programs offered to companies globally, the potential for inconsistent application of the Update could be significant.

If the disclosure requirements as written remain within the final Update, we suggest the Board limit the scope to individually significant agreements. Due to the unique nature of these transactions, aggregation at any meaningful level would be difficult and provide little benefit to the users of the financial statements.

We agree that the proposed amendments should not apply to non-discretionary programs that are not open to the interpretation of the government.

We also agree that the proposed scope of the amendments should not apply to transactions in which the government is solely a customer.

As discussed further in our response to Question 3, we believe the scope of the proposed Update should exclude items covered by ASC 740, *Income Taxes (ASC 740)*.

Question 2: Do you agree that the proposed disclosure requirements should be the same for both domestic assistance and foreign assistance? If not, please explain why and what proposed disclosure requirements you believe should be considered? If so, explain why and be specific about any unique types of foreign assistance.

While in general we agree that any proposed requirements should be the same for domestic and foreign assistance programs, we see potential for inconsistencies within the application of this proposed Update given that confidentiality and the interpretation of confidentiality can differ in certain jurisdictions. As discussed further in our response to Question 7, we believe companies have confidentiality restrictions in their government assistance agreements that would preclude them from disclosing certain information required by this proposed Update.

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.

We believe the scope of the standard should exclude income tax arrangements based on the following factors:

- IAS 20 has similar scope exclusion; therefore a similar exclusion would better align the requirements with IFRS and result in more converged guidance.

- The current disclosure requirements within ASC 740 provide the user of the financial statements with disclosures about rate reductions due to tax credits in foreign jurisdictions. In addition, the tax rate reconciliation requirements would disclose any material benefits received causing a change to the expected statutory rate. This information can help readers understand the ratio of earnings from foreign jurisdictions as compared to domestic earnings.
- We also believe the requirements are redundant to the specific SEC disclosure requirements under SAB Topic 11.c for tax holidays which require the filer to disclose both the aggregate dollar value, and, per share effects of the tax holiday as well as the factual circumstances of the arrangement including the date on which the special tax status will terminate.

Question 4: Do you agree that the scope of the proposed amendments should exclude NFP entities? Alternatively, should any proposed disclosure requirement(s) be applied by NFP entities? If so, specify which proposed disclosure requirements(s) and explain why.

We do not object that the scope of the proposed amendments should exclude not-for-profit entities. Although many not-for-profit entities are exempt from most forms of taxation, if the Board does not remove income taxes from the scope of the proposed Update, the Staff should consider whether not-for-profit entities should be included, as they could have material taxable amounts of unrelated business income.

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?

We believe that the proposed disclosures, will lead to significant operational issues, specifically related to obtaining and auditing the information, as well as disclosing “the amount of government assistance received but not recognized directly in the financial statements.” Many benefits provided to companies are offered by foreign governments as an incentive for entry, or increased investment, in a particular market. Many companies consider the incentives as a reduction to a higher rate or offset to an expense, and only consider the net benefit in their operating models, with no maintenance of information of the gross and net amounts. The proposed requirements would require companies to effectively maintain a separate set of books in order to measure the benefit being received.

In addition to the burden of separately tracking and auditing this information, we believe the disclosure of “the amount of government assistance received but not recognized

directly in the financial statements” is particularly problematic. Again, much of this information required to comply with this disclosure requirement is not currently available and the new disclosures could result in new accounting requirements, which is in direct conflict with the Board’s intent as stated in BC29¹. Current accounting systems are designed to track assets, liabilities, as well as income and expenses to be recorded directly in the financial statements. As acknowledged by Chairman Russ Golden in BC31, such systems have not been developed to track amounts not yet recorded. Furthermore, we believe there would be significant costs associated with tracking and maintaining records of amounts that would never be recorded within the financial statements.

We also believe arriving at the fair value of government assistance received but not recorded in the financial statements could be problematic when benefits are offered for free, at significantly discounted amounts or are undocumented. Local customs and practices could also result in undocumented agreements or agreements where the fair value of the benefit is not precise, thereby causing audit difficulties.

In our view, the costs and complexities connected to the operational burden of tracking, auditing, and developing systems to capture the information to comply with the proposed disclosures vastly outweigh any perceived benefit that the Board is trying to achieve by requiring such disclosures.

Question 6: Do you agree that an entity should be required to disclose, unless impracticable, the amount of government assistance received but not recognized directly in any financial statement line item? If not, explain why.

We question the overall premise of the proposed Update. Companies are already required under a variety of U.S. GAAP and SEC reporting requirements to disclose material risk factors, expectations regarding future performance, and other information that would assist financial statement users in projecting future cash flows. We do not agree that an entity should be required to disclose, unless impracticable, the amount of government assistance received but not recognized directly in any financial statement line item. As discussed in our response to Question 5, we believe that it would be impracticable to track and measure the amounts received from government assistance programs whereby companies may or may not be required to record a direct benefit in their financial statements, and we believe the requirement conflicts with the Board’s stated intent in paragraph BC29. While expenses associated with government taxation programs are tracked as the books and records reflect amounts remitted to government agencies, benefits received but not recorded do not have an associated cash flow impact to the company; and thus, are especially difficult to identify and track. Separate ledgers would need to be maintained, which would require the complexities and judgments associated with the concept of fair value and would likely be difficult to audit. For example, it would

¹ Paragraph BC29 states “the proposed amendments would not create new accounting requirements other than additional disclosures for which information should be available.”

be very difficult for audit firms to provide any level of assurance in order for inclusion within an entity's financial statement disclosures. We also question the usefulness of the information whereby entities would be creating pro-forma financial information to reconcile all benefits received back to the statutory rate, which may never actually be applicable to the entity in the future.

Question 7: For preparers, are there 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.

Certain preparers have confidentiality restrictions in their government assistance agreements that would preclude the entity from disclosing information required by the amendments in this proposed Update. Complying with the proposed Update, which requires disclosure of detailed information about the government assistance agreement, would cause certain companies (e.g., in the resource extraction industry) to violate host country laws and existing government agreements in some situations. Accordingly, it is essential for the Board to provide a reasonable exception for situations where disclosure is prohibited by foreign governments or existing government agreements in order to avoid irreparable harm to investors, efficiency, competition and capital formation. If the Board does not remove this requirement, or provide a reasonable exception when disclosure is prohibited by foreign law, the Board will force some companies to either withdraw from certain investment opportunities, violate foreign law, and/or violate government agreements, with the potential of incurring penalties and being prohibited from further activity in these countries. Either outcome will have a substantial adverse effect on investors, efficiency, competition and capital formation.

Additionally, while certain contracts might permit the disclosure of information to comply with home country laws, regulations or stock exchange rules, some of those contracts only permit the contracting party, not affiliates or parent companies, to make such disclosures. Companies can negotiate home country disclosure rights for future contracts but have little ability to change existing contracts without compensation to the other party (the government), potentially resulting in further harm to shareholders.

In order to prevent entities from breaching such agreements, and thereby potentially losing the agreements' associated benefits, we believe the proposed Update should include a scope exception for agreements under which such disclosures are prohibited by law or agreement. There is a recent example of such an exception in GASB 77, *Tax Abatement Disclosure*, which allows for non-disclosure of specific provisions of an agreement due to legal prohibition of disclosure, and rather, permits for only the general nature of the agreement and provisions to be disclosed.

The current environment of global taxation has many companies concerned that long standing tax incentives offered by some governments are being questioned by broader oversight bodies in an effort to rein in perceived abuses of the current taxation system.

While we support providing users of financial statements with decision useful information, we believe that, given the political environment, this proposed Update could provide a roadmap for the dismantling of long-standing tax incentives, designed by governments to bring additional growth to their economies, which are now being questioned. We believe the changes and updates in the accounting and disclosure standards should be motivated by improvements for the broad base of financial statements users.

We not only believe there are confidentiality constraints that would legally limit the amount of information able to be disclosed, but there is also significant concern about the impact to entities due to disclosing competitive information.

Question 8: For users, do you agree that the information required by the proposed amendments would provide transparency about government assistance agreements? Is the information required by the proposed amendments important for your analysis of an entity? If so, specify which disclosures and why. If not, identify the disclosures and explain why. Is there additional information that should be required to be disclosed in the notes to financial statements? If so, be specific.

We do not believe the proposed disclosures provide users with transparency about an entity's government assistance agreements. The requirements focus solely on the value of benefits received, but not on associated costs incurred to receive such benefits. Most companies, when entering into these types of arrangements, make many cost-benefit decisions. Companies may be asked to provide other concessions when entering a new market, such as building specific infrastructure (e.g., roads, water treatment facilities, fire stations), which will ultimately be donated to the government. Entities make trade-offs based on complex analysis of labor costs, transfer pricing and the cost of natural resources. We believe the disclosure standards as written in the proposed Update would be inconsistent with the disclosure requirements for material commercial third party arrangements.

If the disclosure requirements as written remain within the final ASU, we would suggest that the Board limit the scope to individually significant agreements consistent with the scope of IAS 20. Due to the unique nature of these transactions, aggregation at any meaningful level would be difficult and provide little benefit to the users of the financial statements. If the stated goal of the project is to provide financial statement users with decision useful information to ascertain the material risks associated with a government assistance program ending and the entity incurring higher tax rates in the future, we believe it would be difficult to discern the potential impacts from the disclosures provided if the programs being aggregated are immaterial on an individual basis.

Question 9: The proposed amendments would not amend Topic 270, Interim Reporting, to add any specific interim disclosure requirements. Instead, required

interim disclosures about government assistance would be limited to material changes occurring since the most recent annual period. Should the proposed amendments include additional interim disclosure requirements? If so, what disclosures do you think should be added and why?

If the Board moves forward with the proposed amendments, we believe the standards as written around interim reporting are adequate in providing users of financial statements with updates being required only when material to the overall financial statements.

In support of the overall disclosure simplification project, we do not believe additional interim reporting requirements specific to government assistance should be added. Companies should be able to apply the materiality provisions of existing standards to determine when and if a change in their existing tax structure would be material enough to require incremental disclosure.

Question 10: Do you agree that the amendments in this proposed Update should be applied to all agreements (a) existing at the effective date and (b) entered into after the effective date with retrospective application permitted? If not, explain why.

If the Board decides to move forward with the proposed amendments, we believe that the proposed amendments should not be applied to agreements in existence at the effective date. Although retrospective application would provide consistency, given the long-standing nature of these types of agreements, it would be cost prohibitive to gather the historical data required and develop the associated accounting values for historical periods. Rather, prospective adoption would allow reporting entities time to develop the reporting systems and internal control structure to apply to those agreements entered into after the effective date. We believe retrospective application should be permitted but not required.

Question 11: The proposed amendments would apply to both public business entities and nonpublic business entities (private companies). Should the proposed amendments be different for nonpublic business entities? If so, describe why and how you think they should be different.

If the Board decides to move forward with the proposed amendments, we believe the amendments, if implemented as proposed, should be applied to both public and nonpublic business entities on a consistent basis.

Question 12: How much time would preparers need to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities that are not public business entities be different from the amount of time needed by the public business entities?

If the Board decides to move forward with the proposed amendments, as discussed in our response to Questions 5 and 6, we believe this proposed Update would require entities to establish processes, policies, systems and controls in order to create the detailed information required to complete the necessary disclosures. We believe this could take multiple years for companies to identify information about existing and expired arrangements as well as determining appropriate fair values for any unrecorded benefits. This would include the creation of systems, process and controls to support all of the gathering and creation of information to support the proposed disclosures.

Please feel free to contact Lorraine Malonza at (973) 765-1047 if you would like additional information on any of the issues or recommendations in this letter.

Sincerely,

Committee on Corporate Reporting
Financial Executives International

Committee on Taxation
Financial Executives International