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LETTER OF COMMENT NO. 1A

**VIA E-Mail**

April 7, 2008

Russell G. Golden  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856-5116

Re: **File Reference: Proposed FSP FAS 117-a**

Dear Mr. Golden:

The staff of the Financial Accounting Standards Board (FASB) recently proposed FSP FAS No. 117-a, *Endowments of Not-for-Profit Organizations: Net Asset Classification of Funds Subject to an Enacted Version of the Uniform Prudent Management of Institutional Funds Act, and Enhanced Disclosures* (FSP 117-a). This proposal updates the rules that govern how nonprofit organizations must report their endowments for financial statement purposes. It is a direct response to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which was approved in 2006 by the Uniform Law Commission.<sup>1</sup> As a staff position, FSP 117-a can only extend existing accounting principles to address new developments; it cannot change the underlying principles.

FSP 117-a raises one fundamental question: Is it appropriate to extend pre-existing accounting principles to endowment funds governed by UPMIFA? A secondary question is whether FSP 117-a is an adequate response to UPMIFA, assuming extension is appropriate and possible. In this letter, I will address both questions.

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<sup>1</sup> The ULC was formerly known as National Conference of Commissioners on Uniform State Laws (NCCUSL).

## **I. PRIMARY QUESTION—SHOULD PRE-EXISTING ACCOUNTING PRINCIPLES BE EXTENDED TO ENDOWMENT FUNDS GOVERNED BY UPMIFA?**

The FASB should not sanction the extension of FASB Statements No. 117 and 124 to endowment funds governed by UPMIFA because UPMIFA makes three fundamental changes to the law which are incompatible with the existing accounting pronouncements. First, it does away with historic dollar value. Second, UPMIFA shifts a nonprofit board's focus from discharging its fiduciary duties in appropriating amounts for expenditure to construing and adhering to the donor's intent, as reflected by donor-imposed restrictions. It achieves this by imposing a rule of construction. Third, UPMIFA permits the board to continue spending even though the value of the endowment fund has dropped below the date-of-gift-value, assuming that is the donor's intention. In short, UPMIFA is not a mere update, necessitated by aberrant court cases and some unforeseen but minor developments. It is a ground up reworking of the legal regime that governs the appropriation of endowment value for current expenditure.

**A. THE ELIMINATION OF HISTORIC DOLLAR VALUE.** As noted, the ULC eliminated historic dollar value when it finalized UPMIFA. This is a major structural change. When a board appropriates value for current expenditure, its focus under UPMIFA now is on the undifferentiated whole rather than component parts such as income and principal. Under UPMIFA's regime, it is both inappropriate and impossible to delineate between restricted and unrestricted portions of a fund. The ULC included specific statutory language to make this point clear. Section 4(a) provides:

Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution.

This change eliminates the premise that underlies FASB Statements No. 117 and 124.

Under UPMIFA no part of an endowment fund is any less restricted than any other part when the donor directs the nonprofit and its board to "preserve principal, spend income" because in construing the donor's intent, UPMIFA substitutes the concept of fund value for the donor's nominal distinction between principal and income. The portion of value that can be appropriated for current expenditure is ascertained through an examination of seven factors rather than by focusing on whether there is accumulated accounting income. Reading FASB Statements No. 117 and 124 only serves to highlight the fundamental change that UPMIFA has brought about. Those statements repeatedly refer to gain, income, and historic dollar value, aiming at a target that no longer exists.

**B. A CLEAR FOCUS ON DONOR INTENT.** FASB Statements No. 117 and 124 focus on whether the board is exercising general fiduciary duties imposed by state statute when the board decides how much to appropriate for current expenditure. The staff extends that focus to UPMIFA by reference to EITF Topic No. D-49 in Paragraph 8 of FSP 117-a. Once again, the staff ignores the shift in the legal paradigm which the UCL has instituted through UPMIFA. The comments to Section 4 of UPMIFA are quite clear: In appropriating fund value for current expenditure, the nonprofit's board is to focus on donor intent. These comments describe Section 4 as a rule of construction. The board is instructed to take the seven factors into account for purposes of determining what portion of the fund's value the donor intended to be appropriated for current expenditure. As a consequence, the board is no longer acting pursuant to state imposed fiduciary duties, if it ever was. It is following a donor-imposed restriction.

Whether the FASB agrees with my reading of UPMIFA on this count is somewhat irrelevant. I believe there will be legal counsel who will opine that UPMIFA is a statute that extends donor-imposed restrictions to the fund rather than a statute that imposes a general requirement that the board exercise ordinary business care and prudence. As a consequence, not only does extending the prior pronouncements to UPMIFA fail to take into account the changes the ULC made, but such extension is likely to lead to widely varying practices in how endowments are reported, including variations in the reporting by institutions located in the same state.

**C. CHANGE IN THE LAW APPLICABLE TO UNDERWATER ENDOWMENTS.** The problem with extending existing accounting principles to funds governed by UPMIFA is most evident in the second sentence of Section 7 of FSP 117-a, which provides:

However, consistent with the organization's fiduciary duty for a fund of permanent duration, the amount of permanently restricted net assets should **not** be reduced by (a) losses on the investments of the fund, except to the extent that losses are related to specific investments that the donor requires the organization to hold in perpetuity, or (b) an organization's expenditures from the fund.

As a statement of law, this sentence is wrong. It will require accountants to make adjustments to net unrestricted asset value and net temporarily restricted asset value so that the financial statements continue to report underwater endowment funds at date-of-gift value. Yet, there is no fiduciary duty on the part of a nonprofit to restore a fund to date-of-gift value. There certainly is no duty to

use unrestricted assets or assets from other restricted funds to effectuate a restoration.

UPMIFA has instituted a mark-to-market approach to endowment accounting and spending. It clearly contemplates and permits boards to continue appropriating value from a fund even if it is underwater. That is inconsistent with the existence of an ironclad duty to maintain the fund at date-of-gift value. One of the reasons the ULC eliminated historic value was to permit board's to appropriate endowment value for current expenditure in economically difficult times, exactly when fund value is most likely to drop below historic dollar value. Moreover, even when the fund is not underwater, boards are authorized to spend more than just annual accounting income if the seven factors dictate that level of appropriation.

The ULC believed that this approach better adhered to donor intent when the donor directed the board to "preserve principal, spend income." The FASB staff's refusal to recognize this fundamental change in the law is likely to confuse boards, causing them not to appropriate when they should or can.

To summarize, anyone who has spent even a little bit of time reading FASB Statements No. 117 and 124 and UPMIFA knows that the existing accounting pronouncements are totally out of sync with UPMIFA. The operative paragraphs in FASB No. 124 are focused on gains and losses, with the assumption that those gains and losses limit what can be appropriated. UPMIFA, on the hand, focuses on value. In light of these differing focuses, the FASB should completely overhaul the accounting framework that applies to funds governed by UPMIFA. I recognize that such a revision is inconsistent with providing immediate stop gap guidance to the field, but the changes in context are so great that this attempt to apply existing accounting principles to the changed circumstances collapses under its own weight.

## **II. SECONDARY QUESTION—WHAT CHANGES TO FSP 117-A ARE NECESSARY, ASSUMING FSP 117-A WILL BE ADOPTED AS A STOP GAP MEASURE?**

Despite what I have said, I fear that FSP 117-a is a train that has not only left the station, but that is about to arrive at its destination. In other words, I suspect that FSP 117-a will be adopted as a matter of expediency. Given that fact, I offer the following comments to make it a better staff position.

**A. ELIMINATE APPENDIX A.** Appendix A is completely at odds with the notion that staff positions can extend, but cannot change existing principles. By reciting four different models and then explaining why three don't work, the staff is suggesting that it has the power to change the model that governs accounting for

endowments. The staff's analysis is misleading. The staff does not have the power to select one of the four views over the others. Such action would result in an FSP changing existing accounting principles, something the staff has assured me an FSP can't do. In reality, the staff is demonstrating why the FASB needs to review the applicable accounting principles from the ground up. Accounting for endowments has and continues to be a controversial area of accounting. UPMIFA has not only re-opened old controversies, but also added new dimensions and considerations to the mix.

**B. ELIMINATE FOOTNOTE 1 TO FSP 117-A.** In relevant part, footnote 1 to FSP 117-a provides:

This FSP uses the term endowment to mean all of an organization's endowment funds collectively, encompassing those established by donor-restricted gifts (herein called donor-restricted endowment funds, consistent with the use of the term in FASB Statement No. 124, Accounting for Certain Investments Held by Not-for-Profit Organizations) and those established by board designation (herein called board-designated endowment funds).

Herein lays the entire problem with how the FASB accounts for endowments. As a matter of law, the quoted sentence does not describe the relationship among various endowment funds. UPMIFA requires nonprofit boards to make appropriation decisions on a fund-by-fund basis. Given similarities between some funds, the board may be able to aggregate them for purposes of mechanically applying a spending rate, but the board's duty to honor donor intent runs to each separate fund, not some aggregation. It is the resulting mismatch between how the staff defines an endowment and how UPMIFA defines one that results in surreal financial statements, with all the various adjusting entries to unrestricted, temporarily, and permanently restricted net assets.

**C. PROVIDE CLEAR GUIDANCE BY ADDRESSING UPMIFA.** FSP 117-a is anything but straightforward. It is written as if each state will enact its own unique statutory regime to address appropriation of endowment for current expenditure. In fact, there will be three patterns. The majority of the states likely will opt for Section 4 of UPMIFA as is, without adopting the optional language in Section 4(d). Some states have already and others will adopt the optional Section 4(d) language, creating a rebuttable presumption that a spending rate above 7% is imprudent. Finally, one or two states may adopt a provision similar to Rhode Island's current preservation of purchasing power statute. FSP 117-a should analyze each of these options, clearly telling nonprofits and accountants what the

required treatment is under each. As written, FSP 117-a is cryptic, requiring users to guess at what the staff intends. At the end of the day, any authoritative pronouncement should state what it means.

**D. PROVIDE RELEVANT EXAMPLES TO ILLUSTRATE THE REQUIRED DISCLOSURES.** Both of the examples in Appendix C involve endowment funds that apparently are subject to a statute similar to Rhode Island's. There are several problems with the two examples. First, in terms of the seven factors outlined in Section 4(a) of UPMIFA, the two examples treat preservation of purchasing power as a super factor, which is incorrect. Each factor should be given no more weight than the others because Section 4(a) does not place any more emphasis on one of the seven factors than any of the others. In fact, Section 4(a) instructs the board to focus on the factors it believes are most relevant to a particular donor's intent.

Second, the two examples can be read to imply that a portion of endowment funds subject to plain vanilla versions of UPMIFA are to be treated as permanently restricted because of annual adjustments for inflation. I don't believe that is the staff's intent, but like me, Peter Kennedy, the accountant who submitted Comment Letter 2 to the FASB, contemplates the possibility of such an interpretation.

Third, if FSP 117-a is using these examples to create a substantive rule permitting boards to designate a portion of net appreciation (an obsolete concept under UPMIFA) as restricted because of losses in purchasing power, proposed FSP 117-a should be rewritten to make this point clear. Rules should be stated in the main body of the any pronouncement, not in examples located in an appendix. This placement is also troubling because Appendix C pertains to disclosures required by the substantive requirements imposed by FSP 117-a. In that sense, it is an ancillary (albeit important) part of the pronouncement. Someone focused just on accounting principles may not realize that substantive accounting principles are located in this appendix.

**E. CLARIFY THAT SPENDING RATES CAN BE PERIODICALLY ADJUSTED.** The first sentence in Paragraph 7 of FSP 117-a requires clarification. There should be an affirmative statement indicating that periodic adjustments to the spending rate are not subject to the consistency rule and will not be treated as a change in accounting method.

**F. DELETE INCORRECT STATEMENT REGARDING MAINTENANCE OF HISTORIC DOLLAR VALUE.** The last sentence in Paragraph 7 should be deleted, for the reasons outlined in IC above. As noted, this statement completely misstates the law and it will result in misleading financial statements.

**G. DELETE REFERENCE TO EITF TOPIC NO. D-49.** Paragraph 8 should drop the reference to EITF Topic No. D-49. This reference is outdated, as evidenced by EITF Topic No D-49's focus on appropriation of net appreciation. Under UPMIFA, board's appropriate undifferentiated value, not appreciation. One of the problems with relying on outmoded talismans is that such reliance allows the staff to mechanically extend accounting principles that no longer make sense. This is nothing more than an attempt to hide the staff's apparent refusal to recognize that the underlying law has changed.

**H. ADDRESS CONSOLIDATIONS.** FSP 117-a does not address what funds are included as part of an organization's endowment. A nonprofit can hold restricted endowment funds outright, but restricted endowments that benefit an organization can be held by a controlled or affiliated entity, or in a trust under the stewardship of independent trustees.

Under certain circumstances, legally distinct entities and funds may be consolidated for financial statement presentation. Consolidation is warranted to fairly portray the overall financial condition of an economic unit of activity, but board members and trustees may be confused unless additional detail is provided about funds held by legally distinct entities. That confusion could result in a trustee or director of a legally distinct entity inadvertently breaching her fiduciary duties by focusing on the consolidated numbers rather than the numbers for the legal entity to which she is duty bound. Director and trustee duties generally run to a particular entity rather than a consolidated entity, which is an accounting fiction, albeit a useful one. To avoid confusion, the footnote disclosure should provide relevant information on a disaggregated basis about the endowment of each controlled, affiliated or supporting organization or trust that is included in the consolidated statements. When the same individuals have oversight and fiduciary duties with respect to several funds or entities, aggregating those funds for presentation purposes would be appropriate.

**III. PUTTING FSP 117-A AND ENDOWMENT ACCOUNTING IN CONTEXT.** In discussing the issues posed by FSP 117-a with others, I quickly became aware just how arcane accounting for endowments is. This is tough stuff even for the most adept technicians. But it is also important stuff, with explosive public policy implications.

Recently, legislators and the public both have focused on college endowments in light of ever-escalating tuition costs. That has resulted in legislative calls to force colleges and universities to spend a greater portion of their endowments. For example, on February 7, 2008, Rep Peter Welch (D-Vt) introduced an amendment to the Higher Education Act that would require colleges and universities to spend at least 5% of their

endowments.<sup>2</sup> Earlier this year, Senators Max Baucus (D-Mt) and Charles Grassley (R-Ia) wrote to 136 U.S. colleges asking a series of questions about endowment growth and spending on student aid.<sup>3</sup> Although Senator Grassley has now backed off his threat to legislate forced increases in endowment spending, these threats are still front and center in the minds of many college administrators. There is good reason for continuing concern on their parts: Roger Colinvaux, Legislation Counsel to the Joint Committee on Taxation, kept talk of these proposals alive at the 44th Annual Washington Non-Profit Legal and Tax Conference.<sup>4</sup> In the wake of this legislative activity, several high-profile colleges and universities already have announced increases in financial aid and scholarships.<sup>5</sup>

What those calling for minimum distributions never discuss is the potentially adverse consequences from mandatory payouts. Like most politicians and their constituents, they favor current consumption at the expense of savings and investment. Carl Hess, the director of investment consulting for Watson Wyatt Worldwide Investment, told *Pensions and Investments*:

When you're truly investing for the long term, and then you have to come up with that spending, investing becomes more difficult.<sup>6</sup>

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<sup>2</sup> Amendment to College Opportunity and Affordability Act, H.R. 4137, 110<sup>th</sup> Cong. (withdrawn Feb. 6, 2008), which would have provided:

If the institution of higher education has endowment funds that equal or exceed a total of \$500,000,000, the institution of higher education will expend on annual basis from any endowment funds of the institution will expend funds of the institution an amount that is equal to not less than 5 percent of the total revenue of such endowment during the preceding fiscal year toward reducing the costs of the programs of instruction offered by such institution, including through grants and other aid to reduce the amounts charged for tuition, fees, textbooks, meals, rooms, and board.

Welch subsequently withdrew this amendment, substituting one that would require institutions of higher education to annually report to the Secretary of Education. In explaining the withdrawal, Welch told the *Chronicle of Higher Education* that he had achieved his goal of getting the attention of colleges and universities. He also indicated that he would await the results of a survey by Senators Max Baucus (D-Mt.) and Charles Grassley (R-Ia.), note 3, *infra*. News Blog, *Regulation of College Endowments Has Support in House*, *Chron. Of Higher Ed.* (Feb. 6, 2008). See also Doug Lederman, *House, Focusing on Cost, Approves Higher Education Act*, *INSIDE HIGHER ED* (Feb. 8, 2008)

<sup>3</sup> Press Release, Senate Committee on Finance, *Baucus, Grassley Write to 136 Colleges, Seek Details of Endowment Pay-outs, Student Aid* (Jan. 24, 2008), available at <http://finance.senate.gov/>.

<sup>4</sup> Sam Kean, *Congressional Aide Discusses Possible New Endowment Rules*, *CHRON. OF PHILANTHROPY* (Mar. 4, 2007). Colinvaux discussed whether a minimum payout rule, if enacted, might be limited to large endowments and what supporting organizations might be included in calculation of an endowment's assets.

<sup>5</sup> See Jonathan D. Glater, *Stanford Set to Raise Aid for Students in Middle*, *N.Y. TIMES* (Feb. 21, 2008); Paul Fain, *Yale Commits to Spend More From Its Endowment*, *CHRON. OF HIGHER EDUC.* (Jan. 18, 2008); and John Hechinger, *Harvard Trims Tuition Bills for Families*, *WALL ST. J.*, (Dec. 11, 2007). Also mentioned in the Jonathan Glater's article are Princeton University and Washington University.

<sup>6</sup> Jennifer Byrd, *Mandatory Endowment Spending Could Hurt Returns, Curtail Investment Trendsetting*, *PENSIONS & INVESTMENTS* (Feb. 14, 2008).

Hess, in describing a minimum payout as a “stranglehold,” pointed out that the proposals could reduce returns by forcing colleges and universities to shift investments away from private-equity investments toward more liquid ones.

Mandatory payouts could also adversely affect efforts by colleges to dampen the potentially adverse impact from economic downturns on students and other constituencies. Princeton University, for example, notes that it accumulates more in good times, with the effect of reducing its then current payout rate, so that in bad times, it has the funds available to increase that rate.<sup>7</sup>

Congress and the public are not alone in pressing the endowment issue. Steven T. Miller, IRS Commissioner, Tax Exempt and Government Entities, recently hinted that the IRS may be resurrecting the “commensurate-in-scope” test for tax-exempt status.<sup>8</sup> One

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<sup>7</sup> In its response to Senators Baucus and Grassley, Princeton University described its current spending policy as follows :

The second part of our policy pertains to the spending rate, defined as the amount of endowment income distributed per unit of endowment divided by the unit market value of the endowment at the beginning of the fiscal year. Princeton’s policy does not stipulate a specific rate; the rate results from applying the spending rule and comparing the result to the value of the endowment, which of course will fluctuate – both up and down – over time. Contrary to what some expect, this means that the spending rate will typically be lower when returns are high, and higher when returns are low. The University has a target range for its spending rate of between 4% and 5.75%. When spending falls outside that range for a period of time, the University reviews its spending to determine whether adjustments are required.... We have done careful and extensive research that suggests that the range we have adopted will allow us to maximize current spending while also sustaining the purchasing power of the endowment into the future. This allows us to honor our current commitments and to meet new needs as knowledge increases and new fields emerge.

This research also confirms the wisdom of allowing for fluctuation across the range rather than locking in a specific percentage.... Unlike grant-making foundations, which can scale back their giving in lean years, universities need to make long-term commitments to their faculties (many of whom are leaders in their fields), their academic programs, and the facilities (including state-of-the art laboratories and libraries) that are essential to world-class teaching and research. Universities need to sustain those commitments even in challenging financial time.

Shirley M. Tilghman, Princeton University, *Response to Senators Baucus and Grassley’s January 25, 2008 Letter* (Feb. 22, 2008), available at [www.princeton.edu](http://www.princeton.edu).

<sup>8</sup> Leading authority Bruce R. Hopkins notes that the commensurate-in-scope test was first enunciated in 1964, but until recently, rarely referred to by the IRS. Bruce R. Hopkins, *THE LAW OF TAX-EXEMPT ORGANIZATIONS* (Wiley 2003). Related to the operational test, the commensurate-in-scope test asks whether a charity’s programs and activities are commensurate with its financial resources. See Revenue Ruling 64-182, 1964-1 C.B. 186, which provides absolutely no guidance on how the test is applied. Hopkins points out that the test sat largely dormant until 1990, when the IRS issued a technical advice memorandum taking the position that one organization’s expenditures on charitable activities were insufficient when measured against its fundraising and administrative expenses. He then notes that the question of exemption in that situation was finally resolved by the courts on inurement grounds, with no mention of the commensurate-in-scope test. See *United Cancer Council*, 109 TC 326 (1997), rev’d and rem’d 165 F.3d 1173 (7th Cir. 1999). For additional insight into the commensurate-in-scope test, see Evelyn Brody, *A Taxing Time for the Bishop Estate: What is the I.R.S. Role in Charity Governance?*, 21 HAW. L. REV. 537 (1999).

formulation of this test requires charitable organizations to conduct their activities so that they are aligned with and reflect the organization's financial resources. Miller has hinted that the IRS might invoke the commensurate-in-scope test to eliminate so-called hoarding by charities, which could include accumulating large endowments.

It is against this backdrop that the FASB staff proposed FSP 117-a, adding it to the already confusing mix created by FASB Statements No. 117 and 124. As noted earlier, by extending existing principles, FSP 117-a addresses how endowments governed by UPMIFA should be accounted for in financial statements. It bears directly on how legislators like Senators Baucus and Grassley, as well as members of the public, will view university, museum, hospital, and foundation wealth as reflected by their endowments. Under one approach, endowed institutions will look as if they are awash in spendable cash and marketable securities, which will inevitably result in legislative and public pressure to increase endowment spending. Under an alternative approach, the financial statements will present a less rosy picture in terms of freely expendable resources. Placed in this context, endowment accounting becomes more than an arcane effort to balance debits and credits. It impacts how much Junior and his parents must pay for Junior's college education.

In formulating FSP 117-a, one overarching principle should have guided the FASB's staff: Financial statements should fairly portray a nonprofit's endowment, clearly indicating what portion of an endowment is currently available for spending without restrictions and what portion is legally unavailable for current consumption. Had the staff honored that principle, they would have advised the FASB that extending pre-existing accounting principles to endowment funds governed by UPMIFA was both inappropriate and impossible. Regrettably, the FASB staff chose to recommend extending those principles. If the FASB adopts the staff's recommendations, the resulting financial statements will be riddled with accounting fictions that inaccurately portray the resources that are available to nonprofits for current expenditure. Those fictions will lead to louder cries for increased spending levels at the expense of prudent accumulations, together with draconian measures to achieve that result.

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In a May 25, 2007 letter to U.S. Treasury Secretary Henry Paulson discussing the IRS's plan to redesign the Form 990, Senators Baucus and Grassley specifically raised the commensurate-in-scope test in the context of college and university endowments. At a minimum, the two senators requested that redesigned Form 990 ask specific questions to determine whether the test is being met. They also asked that the Treasury and IRS to put more teeth into the test and consider audit plans that focus on it. At the time, I wrote:

None of this should be taken lightly. This is a shot across the bow, possibly paving the way toward a minimum payout requirement applicable to public charities. We can only wonder how Harvard and other large universities are reacting.

Jack B. Siegel, *Is the Baucus/Grassley Fix In? We Can Certainly Hope So*, Charity Governance Blog (May 30, 2007), available at [www.charitygovernance.com/charity\\_governance/2007/05/is\\_the\\_grassley.html](http://www.charitygovernance.com/charity_governance/2007/05/is_the_grassley.html)

As a stop gap measure, I would advise that the FASB leave it to each institution that is governed by UPMIFA to account for its endowment funds as it deems appropriate, but to require far greater disclosure in the footnotes. The FASB should then open up a project to rewrite the rules that govern accounting for endowments. The staff has advised me that this is a three-year process. I don't see why. Given the needs of financial statement users, there is only one way to account for endowment. That is to give full economic effect to the legal restrictions limiting the board's ability to appropriate amounts for current expenditure. If the FASB were to convene a two-day conference of effected constituencies, a set of workable rules could be developed in six months.

In the past, the FASB has reached out to the American Bar Association by contacting the Business Law Section. While its input is certainly welcome, I believe the more relevant sections are the ABA's Tax Section (Committee on Exempt Organizations) and the ABA's Real Property and Trusts and Estates Section. Members of these sections are the ones who work with both donors and large nonprofit institutions. They will have the most sensitivity to the relevant issues. Of course, representatives from the National Association of College and University Business Officers (NACUBO), the Association of Governing Boards of Universities and Colleges (AGB), the Council on Foundations, the Philanthropy Roundtable, the Independent Sector, the American Hospital Association, and the American Association of Museums (AAM) should be at the table. Last, but not least, representatives from the National Association of Attorneys General—National Association of State Charity Officials (NAAG-NASCO) should also be involved in the process. A number of regulators have strenuously objected to existing accounting treatment. In several instances, regulators and legislators have gone so far as to override GAAP requirements. When regulators and legislative bodies take that sort of action, it should be obvious that something is wrong with the status quo.

In the end, the public, donors, boards, regulators, and members of the charitable class require financial statements that accurately portray the state of a nonprofit's endowment funds. They currently aren't receiving that information. FSP 117-a, as proposed, will only compound the problem because it ignores material changes in the law. Audited financial statements must comply with GAAP, but when GAAP gets it wrong, those statements can never fairly present an organization's financial condition or the results of its operations.

I have written an article that fully develops the ideas presented in this letter. I will post the article at [http://www.charitygovernancelaw.com/website/Jack\\_Siegel\\_FSP\\_117a\\_EOTR\\_Article\\_April\\_2008.pdf](http://www.charitygovernancelaw.com/website/Jack_Siegel_FSP_117a_EOTR_Article_April_2008.pdf) once it becomes available. I will provide copies to the relevant FASB staff members if that is desirable, but because of copyright considerations, I am not submitting the article as part of my formal comments.

I am both a lawyer and accountant. I would be more than willing to work with the staff in rewriting both FSP 117-a and the underlying accounting pronouncements. Thank you for your time and consideration.

Sincerely yours,

/s/ Jack B. Siegel

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