



LETTER OF COMMENT NO. /

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VIA E-Mail

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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. Gordon:

The staff of the Financial Accounting Standards Board recently issued Proposed FSP No. 117-a, placing a 60-day public comment period on the proposal, which expires April 18, 2008. I am writing to request a six-month extension of that comment period given the importance of the issues raised by the proposal.

Until recently, the issues addressed in Proposed FSP No. 117-a were largely questions of arcane accounting principles. In recent months, however, members of the both the U.S. Senate and House of Representatives have been highly critical of university endowment spending rates, arguing that colleges and universities should be spending more of their endowments to reduce the ever-increasing cost of tuition, books, room, and board. Some legislators have threatened legislation that would impose minimum spending rates on colleges and universities. During the same period, Steven T. Miller, the IRS Commissioner, Tax Exempt and Governmental Entities, has given several speeches in which he has suggested a possible link between tax-exemption and the level of asset utilization by exempt organizations—which is another way of saying that some tax-exempt entities should be spending a greater share of their endowments.

These developments, which are being hotly debated and may even find their way into the upcoming Presidential election, make it more important than ever that nonprofit financial statements accurately reflect the unrestricted and restricted portions of nonprofit endowments. Appendix A to Proposed FSP No. 117-a sets out four views of how donor-restricted endowment funds should be accounted for, with at least two of these views reflecting diametrically opposing viewpoints. The importance to good public policy of the issues addressed by Proposed FSP No. 117-a makes it imperative that the FASB and its staff make the right decisions.

For at least five reasons, a 60-day comment period does not provide adequate time for a full and fair airing of the issues posed by the FASB staff's proposal. First, the issues being debated center on a relatively new statute, the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which was promulgated by the Uniform Law Commission in July of 2006. In order arrive at accounting principles that correctly reflect what UPMIFA requires, it is necessary to understand UPMIFA. This makes input from the legal profession particularly important. Yet, because Proposed FSP NO. 117-a has its origins with the FASB, there will be some delay before members of the legal profession become aware of this development from the accounting profession. The length of the comment period should take that delay into account, as well as the importance of lawyer input.

Second, many of the lawyers and accountants who work with nonprofit institutions assist these institutions and their donors with tax return preparation. The comment period spans the busiest portion of the filing season, ending just three days after April 15th. The people who are most likely to be in a position to offer constructive comments simply don't have the time at this time of year to be submitting thoughtful comments. These people include tax lawyers and accountants who represent and serve on the boards of many nonprofits and who also represent donors, trusts, and estates that fund nonprofit endowments. As a consequence of their representation, these professionals are currently buried in trust accounts and tax returns, often supervising staff accountants and paralegals in the preparation of hundreds, if not thousands, of fiduciary tax returns.

Third, the issues posed by Proposed FSP No. 117-a are the sorts that a number of professional associations likely would want to comment on. While I am not authorized to speak for the American Bar Association Tax Section and don't purport to do so, I do note that their Exempt Organization's committee has scheduled a program which focuses on endowments, including accounting for endowments, at its May 2008 meeting in Washington, D.C. This is the group's first formal meeting since the issuance of the staff's proposal ten days ago. Any ruling-making body should set deadlines that recognize that professional groups do not meet on a weekly basis.

Even if ABA Tax Section or Exempt Organizations Committee choose not submit formal comments, members of the group who represent institutions with endowments

may want to comment once they understand the issues. I also note that the AICPA holds an annual not-for-profit conference each June. The issues posed by Proposed FSP No. 117-a should be of great interest to many conference attendees, but undoubtedly there will be many participants who are unaware of the full import of the issues raised by the proposal until they have the opportunity to attend a formal presentation. They too might want to comment, but the 60-day comment period closes well before that conference.

Fourth, last year, I devoted a significant amount of time to commenting on the IRS's proposed redesign of the Form 990, the tax return filed by tax-exempt entities. I also participated in the ABA Tax Section's formal comment process. As an individual, I was able to submit my comments shortly after the proposed redesign was released in June 2007. Through no fault of anyone, the Tax Section was unable to respond nearly as quickly. That is the nature of a professional group. They have an elaborate approval process that takes time to adhere to. That process is designed, in part, to assure that the group is making fair and objective comments rather than reflecting the views of someone who has somehow hijacked the process for the benefit of a client who desires a particular outcome. By setting a 60-day comment period, you will be freezing out a number of professional groups that might want to comment, but can't because their internal processes do not permit such rapid responses.

Fifth, there needs to be public discussion. People and professional groups need time to become aware of other people's thinking and engage in debate. As already noted, 60 days will be an insufficient amount of time for people and groups to analyze and publish positions, let alone read and reflect on the positions and comments that others make. In the end, the FASB and its staff are the beneficiaries of such discussion and debate, leading to better standards and principles.

Given these five reasons for extending the comment period, it is hard to understand why the staff opted for such a short comment period. I can only speculate, but I suspect it might be because there are nonprofits with fiscal years ending in 2008 that must already (or soon will) account for endowments that are subject to UPMIFA. This is certainly a legitimate concern, but I believe the FASB can address it by permitting nonprofits located in UPMIFA states to apply Proposed FSP No. 117-a in its proposed form until a final pronouncement is issued. But expediency should not trump a full airing, analysis, and resolution of the issues posed by Proposed FSP No. 117-a.

At the end of the day, a 60-day comment period denies all the diverse constituencies that should have input into the process the opportunity to comment. It is unrealistically short. As someone who disagrees with much of Proposed FSP No. 117-a, the 60-day period looks to me like a rush to judgment—a closed process with a foregone conclusion. Given the public policy implications of this proposal and the likelihood that everyone will be living with it for the next three or four decades, I believe an extension of the comment period is more than warranted.

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Thank you for your time and consideration.

Sincerely yours,

/s/ Jack B. Siegel

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