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February 8, 2016

Via email to director@fasb.org

Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Government Assistance (Topic 832): Disclosures by Business Entities About Government Assistance (File Reference No. 2015-340)

Dear Ms. Cospers:

We are pleased to provide comments on the Board's proposal to add a new disclosure regime in the notes to the financial statements related to government assistance. While we support the Board's objective of improving the quality of information provided in the notes, we believe the costs of this proposal will be prohibitively high.

We have several reservations about this proposed Update. First, this proposal has the potential to scope in thousands of legally enforceable arrangements. Collecting, aggregating and summarizing the information necessary to comply with the proposal's disclosure objectives will be costly. It may also potentially discourage some governments from making assistance available. Specifically, it may lead governments to modify assistance programs to restrict disclosure by business enterprises. In addition, it will be challenging to identify and separate "legally enforceable" (i.e., discretionary) arrangements from government assistance that is provided under the law (i.e., nondiscretionary benefits). For purposes of making this distinction, we note Topic 606 includes a similar notion of a "legally enforceable" arrangement to identify a revenue generating contract with a customer.¹ Given the similarities of that guidance to the language proposed under this exposure draft, reporting entities will likely find the overlapping effect confusing.

There are common situations that illustrate the difficulty and increased cost associated with the proposed Update. For example, a government might want to encourage and accelerate the development of certain technology or products by the private sector, which the government might procure in the future for its own use. Consequently, the government decides to provide capital to a business enterprise which develops the said technology or product. Under this proposal, the business enterprise would have to assess the nature of the assistance including the terms and conditions to determine whether this arrangement is considered "discretionary" requiring detailed disclosure, or whether the government is considered in substance a "customer" as noted above, exempting this arrangement from the proposed disclosure regime. Furthermore, many income tax benefits within Topic 740 *Income taxes* would potentially be scoped in as many income tax

¹ For purposes of identifying a contract with a customer, paragraph 606-10-25-2 currently states "enforceability of the rights and obligations in a contract is a matter of law."

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benefits received by business enterprises are negotiated with governments (refer to Question 3 for detailed explanation on tax benefits within the scope of Topic 740).

We also believe this proposal has the potential to cause unintended economic policy consequences. For example, governments may reconsider assistance programs or/and modify programs if they think the arrangements will need to be disclosed. In addition, it may be illegal in certain jurisdictions to provide the disclosure the proposal calls for. Any final standard should provide relief from the disclosure requirement if complying with it would violate a law. Otherwise, a reporting entity would need to stop accepting the assistance. We note that the Securities and Exchange Commission took issues related to violating laws into account in formulating its December 2015 proposal, *Disclosure of Payments by Resource Extraction Issuers* (Release No. 34-76620), and its August 2015 rulemaking, *Pay Ratio Disclosure* (Release 33-9877).

As such, we are not certain that the expected benefit from this proposal would outweigh the costs (legal, operational, and economic policy changes) of implementing its requirements. As a more modest first step, the Board might consider certain specific disclosure requirements to particular types of government assistance as part of its disclosure effectiveness project.

These points and others are included in our responses to the Board's specific questions in the Appendix to this letter. We would be pleased to discuss our comments with the FASB staff. Please direct questions to Adam Brown at (214) 665-0673 or Yosef Barbut at (212) 885-8292.

Very truly yours,

A handwritten signature in black ink that reads "BDO USA, LLP". The letters are slightly slanted and connected, with a cursive-like style.

BDO USA, LLP

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Appendix

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?

We struggle with the notion that the type and extent of disclosure related to transactions with the government would be determined based on whether a government transaction falls under one of three “buckets”: government as a customer, a provider of discretionary benefit, or a provider of nondiscretionary benefits. As noted in our cover letter, we are concerned this approach will be far-reaching, with significant unintended consequences.

The FASB’s ongoing disclosure effectiveness project could be the appropriate venue to consider disclosure improvements related to specific types of government assistance.

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 differ. Are there any unique types of foreign assistance that should be considered?

We believe that there are hundreds of government assistance programs which come in many permutations and forms. It is very likely that implementing the requirements of this proposal would be significantly more challenging and costly in foreign countries than in the U.S. In particular, foreign governments’ assistance related to income tax (discussed below) and non-income tax benefits are abundant and would necessitate increased resources and costs to comply with the proposal’s requirements. For example, in China many government assistance programs exist at the federal, regional and local levels that provide numerous incentives to encourage multinational enterprises to open manufacturing, research, distribution and sales facilities in China. The terms and conditions of these assistance programs may not be readily available; and even if they are, there are likely numerous barriers to disclosing their terms.

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

No. All relevant income tax information should be disclosed pursuant to the requirements of Topic 740, considering potential disclosure improvements currently being considered by the FASB as part of its ongoing disclosure effectiveness project.

Distinguishing discretionary from nondiscretionary income tax benefits would be particularly challenging and costly given the inherent differences in tax laws, policies and tax administration among countries, states, and local governments. In fact, Board concluded in 1992 that it is impractical to distinguish discretionary or “unique” from nondiscretionary tax holidays and therefore did not require or permit recognition of a deferred tax asset for the anticipated benefits of tax holidays.³ Furthermore, multinational enterprises often choose to negotiate and obtain private rulings from governments to secure a particular benefit and receive certainty in tax administration even though the benefit might be broadly available in the law(s).

³ SFAS 109’s Basis for Conclusion and ASC 740-10-25-36.

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Moreover, some discretionary income tax benefits come in the form of investment tax credits for which ASC 740 currently provides specific disclosure (e.g., the level and existence of credits are dependent on investment capital, employment and other variables).⁴

That said, we would not object to targeted improvements related to government assistance affecting income tax as part of the FASB's ongoing disclosure effectiveness project. For example, users could benefit from early warning disclosure of pending expiration of discretionary benefits, including the nature of the benefit, the expected effect on income tax, and whether the benefit is expected to be renewed or replaced. Additionally, the FASB could consider codifying the SEC disclosure requirements in Staff Bulletin Topic 11.C.⁵

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, which specific proposed disclosure requirements and explain why.

Yes.

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 believe this requirement is problematic because it would require considerable judgment to quantify the effect and eventually lead reporting entities to conclude it is not practicable. It could also potentially become a contentious disclosure requirement leading auditors to incur considerable time to verify the accuracy and reasonableness of the disclosure.

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 the proposed Update?

N/A

Question 8: For users, do you agree that the information required by the proposed amendments would improve transparency about government assistance agreements? Is the information required by the proposed amendments important for your analysis of an entity?

N/A

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

No. Our concerns about the cost and unintended consequences of the proposal apply equally to annual and interim periods.

⁴ ASC 740-10-50-20

⁵ ASC 740-10-S99-2

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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 FASB decides to continue with this project in its current proposed format, we recommend considering prospective application to “discretionary” government assistance obtained on or after the effective date (i.e., preexisting benefits would be grandfathered). This will minimize the implementation cost and provide time to allow reporting entities to develop disclosure systems and internal control over the necessary information.

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

In its current version, the proposed Update will likely increase cost and complexity for all reporting entities, with potentially greater impact on nonpublic entities that are already resource-constrained. While government assistance generally benefits both public and nonpublic entities, we note a private entity’s resource providers are typically in close proximity to management. Further, tax- and estate- planning strategies are common considerations for private entities. Therefore, we recommend exempting nonpublic entities from this proposal since their users typically have access to such tax-related information.

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 public business entities?

All reporting entities would need significant led time to gather relevant information, develop systems and processes to identify and collect the information, and design and implement internal control. At a minimum, we believe one year is necessary to prepare for implementation. See responses to Questions 10 and 11.