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April 21, 1999

Mr. Timothy Lucas
Director of Research and Technical Assistance
Financial Accounting Standards Board
Of the Financial Accounting Foundation
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

**Re: Exposure Draft Response
Consolidated Financial Statements
File Ref No. 194-B.**

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Dear Mr. Lucas:

Let me congratulate you and your colleagues for the comprehensive approach taken to the latest version of the aforementioned exposure draft. With regard to the policy issues affecting for profit entities, I believe FASB has done a remarkably thorough job.

However, with regard to not for profit, non-stock membership corporations, I believe that the aforementioned FASB Exposure Draft does a major disservice to the donor public by exempting these organizations from the requirement to file consolidated financial statements. More often than not, contributors never see the consolidated financial totals of multi-corporate groups that **in fact** are controlled by the parent not-for-profit corporation through a licensing agreement. My understanding of the current FASB exposure draft is that multiple charitable corporations operating under a parent/affiliate licensing arrangement conveying conditional rights of termination to the licensor (parent) is not sufficient grounds to establish control and in turn required consolidation.

Paragraph 77 of Appendix A speculates that even if the use of a common name by an affiliate were terminated for cause, then there would be no effect upon the net assets of the offending affiliate. This is an interesting presentation from two perspectives. In the first instance, FASB's interpretation seems to implicitly recognize the existence of control as determined by a legally binding and enforceable agreement between affiliated organizations during the term of the agreement. It follows then that if control exists during the term of the agreement, then consolidation is mandated during the term of the agreement.

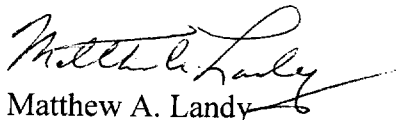
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Secondly, Paragraph 77 asserts that upon termination of the licensing agreement, control does not exist because the offending licensee can control the net assets accumulated during the period of licensure. This later FASB assertion seems to fly in the face of virtually all charitable fundraising statutes dealing with the solicitation of funds and subsequent expenditure of funds by the soliciting tax-exempt organization. Aside from legislative requirements, there is also a well-established legal doctrine of “cy-pres” which calls for, in part, the judicial review and determination of whether funds raised in the name of one organization can be spent by that organization if they are no longer the organization, which solicited the funds. Consumer protection statutes refer to that practice as “bait & switch” and attorneys general typically have the standing to initiate “cy-pres” petitions to the court on behalf of the donor public when individual donors themselves do not initiate such actions. In light of these legislative and judicial provisions, how can FASB conclude that former licensee affiliated non-profit organizations are not controlled?

Accordingly, the exposure draft’s exemption from the requirement to produce consolidated financial statements accorded to non-profit controlled groups is inappropriate and NCIB urges FASB to reconsider the language of the exposure draft particularly paragraphs 77 and 177 of Appendix A. Moreover, I believe contributors and other resource providers have a right to know about affiliation agreements, including the fact that they exist and the essential elements of operational and financial control contained in the agreements. I suggest that disclosure of the essential elements of these agreements be mandated in the consolidated financial statements of non-profit groups. I suspect that the implications of such a pronouncement would have significant positive impact upon IRS Form 990 reporting as well and may in fact lead to streamlining of Form 990 reporting which is a further public contributor benefit. A complimentary benefit of streamlined Form 990 reporting is dramatically simplified state reporting on a consolidated basis. Frankly, with the divergence of practice allowed under Section 1501 of the Internal Revenue Service Code, contributors are rightfully confused about the corporate composition of GAAP financial statements and related Form 990 filings. FASB could take a giant step forward for contributors by eliminating much of that confusion and requiring consolidated financial statements for non-profit affiliated groups.

If you have, any questions concerning this response feel free to contact me at your convenience.

Sincerely,


Matthew A. Landy