



October 30, 2023

Technical Director
Financial Accounting Standards Board
801 Main Avenue
P.O. Box 5116
Norwalk, CT 06856-5116

Via online submission

Re: FASB Exposure Draft on Income Statement—Reporting Comprehensive
Income—Expense Disaggregation Disclosures; File Reference No. 2023-ED500

Dear Chair Jones and Members of the Board:

The Center for American Progress (CAP or “we”) respectfully submits this letter regarding the above-referenced exposure draft, issued July 31, 2023.

CAP is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans through bold, progressive ideas, strong leadership, and concerted action.

While we are generally supportive of amending U.S. GAAP rules to require increased disaggregation of income statement expenses, we have very serious concerns with the arbitrarily limited scope of the proposal, which will not only undermine the objectives of the proposal but also lead to significant unintended consequences and investor harm.

The proposed amendments should be required of both public and private companies

The proposal to require disaggregation of key facts about a company is long overdue. This information is essential for investors, creditors, and business partners to assess the value and risks of a company.

However, the proposal’s arbitrary and unsupportable exclusion of private companies from the enhanced requirements in the proposal not only significantly diminishes the

value of these amendments but also exacerbates the disparity in treatment between otherwise similarly situated businesses, with potentially significant ramifications on both public and private companies. Stunningly, the critical question of whether to apply the proposal to private firms is not even directly presented for comment in the questions for respondents.¹

Many companies offering securities pursuant to exemptions from and exceptions to the public registration requirements may not be required to provide even the most basic information about financials, operations, and risk management of the underlying company.² Yet, through exemptions, which have been expanding over the past few decades, private companies now raise more capital annually than is raised in the public markets.³ As a direct result, a broad swath of the American public—including many public and private pension funds and individuals—are now exposed to private markets. And, critically, most of those individuals now exposed to private markets, either directly (through retail investor exemptions) or indirectly (through retirement and savings accounts managed by institutional investment firms and banks), likely believe that the companies in which they are invested must comply with U.S. accounting and auditing rules. This potential broader exposure warrants making private companies subject to the proposed disaggregation rules (indeed public company accounting rules generally), rather than risk broader harm.

Many of the exemptions from the public disclosure framework are based on the false assumption that wealthy or sophisticated investors and lenders in private market companies and funds do not need this basic information or are all possessed of the power to obtain it. Extensive research and recent market events clearly demonstrate the falsity of that assumption. Thousands of investors pour billions of dollars into equity and debt securities of private companies each year, often based on very limited knowledge of those companies' financials. In the extreme cases, like that of FTX, there is fraud. FTX was able to raise nearly \$2 billion from some of the world's most prominent private markets investors while allegedly not complying with even basic

¹ See, e.g., Question 2 of the exposure draft: "Should the proposed amendments apply to all public business entities? Please explain why or why not."

² "Concept Release on Harmonization of Securities Offering Exemptions," U.S. Securities and Exchange Commission, 84 FR 30460, June 26, 2019, available at <https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf> (explaining that "[i]ssuers in [Rule 506] offerings are not required to provide any substantive disclosure and are permitted to sell securities to an unlimited number of accredited investors with no limit on the amount of money that can be raised from each investor or in total.").

³ See, e.g., Elisabeth de Fontenay, "The Deregulation of Private Capital and the Decline of the Public Company," Hastings L.J., 2017, available at https://scholarship.law.duke.edu/faculty_scholarship/3741/; and George S. Georgiev, "The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms, Emory U. Sch. Of Law, Fall 2021, available at <https://scholarlycommons.law.emory.edu/faculty-articles/2/>.

financial controls.⁴ And while private company mega-frauds should be shocking and rare, they have become increasingly commonplace, suggesting a fundamental breakdown in the assumptions and market dynamics between investors in private market securities and the companies in which they invest.

Nevertheless, the available information from the meetings held prior to release of the exposure draft suggested that the FASB's erroneous assumption that private markets investors could essentially fend for themselves played a role in the decision to exempt private companies.⁵

Many of the corporate debt markets are privately sold securities. Much of the equity markets are privately sold. Investors who purchase such securities through exempt private offerings may be vulnerable to risks from undisclosed information in the underlying assets. Yet, investors may believe that the securities are safe because, for example, they are based on loans made by banks exercising their own due diligence and presumably complying with the applicable bank regulator standards. However, this was precisely how the seeds of the Global Financial Crisis were sown.

Whether considering the Global Financial Crisis or just billions of dollars wasted on investments in overvalued companies, the lesson is clear: investors and other market participants are not getting the detailed and accurate information they need about private companies.

The fact is that no financial expert, no matter how sophisticated, can accurately assess the value and resiliency of a company without certain basic facts, particularly about financials. The FASB should be focused on ensuring that investors and other market participants have that basic information with which to make their business decisions. By artificially restricting its application to public companies only, the proposal does not achieve that purpose.

To the contrary, by failing to apply the important expense disaggregation amendments described in the exposure draft to private companies, the Board would be contributing to the hidden risks of the private markets. Worse, the FASB would be widening the regulatory and compliance gaps between public and private companies, further disincentivizing companies from going or remaining public.

⁴ Press release, "SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Asset Trading Platform FTX," U.S. Securities and Exchange Commission, December 13, 2022, available at <https://www.sec.gov/news/press-release/2022-219>.

⁵ See, FASB March 29, 2023, meeting webcast beginning at 1:06, at <https://www.fasb.org/page/PageContent?pagelD=/meetings/pastmeetings.html&isStaticpage=true#vc>.

FASB is not keeping up with the markets, putting the financial system at risk

We are genuinely concerned that FASB's arbitrarily limited efforts to modestly improve expense disclosures are based on a wildly outdated view of the existing capital markets, where the vast majority of securities offered for sale today are no longer through public offerings. FASB is simply not keeping up with the rapidly changing financial and economic environment, with its attendant risks for investors, consumers, and the public.

The rapidly growing private markets are no longer just a story about the rise of private equity, but also about burgeoning private credit.

As competition continues to heat up between traditional banks and private credit firms,⁶ individual banks have less leverage to gain important information and more incentives to close deals quickly. Requiring more transparency in financial statements of borrowers, including private companies, would strengthen banks' ability to conduct due diligence before extending credit. It would also enhance a bank's assessment of cash flows in furtherance of anti-money laundering and combatting the financing of terrorism responsibilities. And it would also ensure that non-bank creditors, which have become significant players in the corporate lending markets, would have essential expense information with which to make their business decisions.

The Financial Stability Oversight Council (FSOC) has recognized the increased risks associated with the rise of private credit, among other changes in the financial system. It has appropriately proposed an analytic framework for assessing identification of financial risk to include activities that pose financial stability risks, such as "new or evolving financial products and practices."⁷ Yet, if the FASB proposal were to be finalized as proposed, it would almost certainly ensure that many lenders would not receive disaggregated expense information, further tipping the balance of lending activity toward greater risk.

It is also striking that the decision about whether to exempt private companies from the proposal was purportedly based in part on cost grounds.⁸ The state of technology and accounting software today, not to mention the manner in which companies and their accountants operate via electronic communications, have greatly improved the efficiency of accounting and presentation of financial statements. Moreover, this cost

⁶ Kate Marino, "Post-SVB crisis, this debt market juggernaut is posed to grow even more," Axios, August 14, 2023, available at <https://www.axios.com/2023/08/14/private-credit-banking-svb>.

⁷ Financial Stability Oversight Council, "Analytic Framework for Financial Stability Risk Identification, Assessment, and Response," 88FR 26305, April 28, 2023, available at <https://www.federalregister.gov/documents/2023/04/28/2023-08969/analytic-framework-for-financial-stability-risk-identification-assessment-and-response>.

⁸ See, March 29, 2023, meeting webcast beginning at 1:106, at <https://www.fasb.org/page/PageContent?pageId=/meetings/pastmeetings.html&isStaticpage=true#vc>.

consideration does not adequately reconcile with the assumption, discussed above, that investors can obtain this information upon request. If that were true, then a company would have it, in which case it should not be any great new expense to provide it to everyone.

Further, the cost consideration completely disregards the potentially increased costs associated with applying the disaggregation to companies much later in their life cycles, such as when they become public. The FASB proposal would widen the gap that a company would have to cross when it becomes a public company. Yet the proposal does not assess this impact.

Meanwhile, the benefits of the proposal in facilitating enhanced due diligence and risk assessments for investors and other market participants are significant, especially with respect to the hundreds of billion-dollar private companies in which millions of retirees and everyday Americans are invested.

Conclusion

For the reasons discussed above, the Center for American Progress strongly encourages the FASB to make the proposed amendments applicable to private companies and, if necessary, re-open the comment period to do so.

For any questions regarding this comment letter, please contact Alexandra Thornton, Senior Director, Financial Regulation, at the Center for American Progress, athornton@americanprogress.org.

Sincerely,

Center for American Progress