

Via email

April 12, 2004

Letter of Comment No: 13
File Reference: FSPFAS106B
Date Received: 04-13-04

Financial Accounting Standards Board
Members of the FASB Staff
401 Merritt #7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed FASB Staff Position No. FAS 106-b

Dear Members of the FASB Staff:

Thank you for the opportunity to provide our comments on the recently issued FASB Staff Position on the Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the "Act"). This letter provides our comments on issues we believe will help clarify and implement recognition of the impact of the Medicare Act for employers sponsoring retiree prescription drug programs.

Timing

1. We provide background commentary on timing related to implementing the existing proposed guidance under FAS 106-b.

With the existing guidance, employers have important decisions to make about whether their plans will meet the standards of Actuarial Equivalence and in turn are entitled to the Part D employer subsidy, and whether to recognize the impact of the Act with the retroactive provisions that FAS 106-b defines. However, there are many uncertain areas of whether plans will meet the ultimate test of Actuarial Equivalence and it may be a judgment call of a plan sponsor working with their actuaries to arrive at an interim conclusion. The Centers for Medicare and Medicaid Services (CMS) will first issue regulations in June or even July 2004 of this year. In the case where an employer does not want to restate any interim financial statements as a result of unexpected CMS guidance (certainly, a reasonable objective), employers will have a fairly short time frame to evaluate the impact of the law, re-measure FAS 106 results and compute a revised 2004 expense.

2. Given that much depends upon the CMS guidance for plan sponsors to accurately determine if their programs meet the test of actuarial equivalence, we suggest the FASB Staff consider contingency plans in the event that the CMS guidance is issued much later or in the event that the CMS initial guidance still leaves key issues not addressed specifically. In light of the fact that guidance is not likely until mid year or later from CMS, we suggest that the FASB Staff consider an extended period of compliance with FAS 106-b to replace the current paragraph 23 reference of June 15, 2004 to September 15, 2004. In this way, employers would have a longer time to evaluate guidance but still receive retroactive credit. Of course, earlier compliance is always encouraged.

Our understanding is that the employer must make decisions about recognition using a reasonable interpretation with available guidance. Many employers do not want to recognize a Part D subsidy unless it is certain that the employer will in fact qualify. For that reason, a reasonable extension of time or some timeframe related to the issuance of CMS guidance will smooth transition efforts.

What makes the definition of actuarial equivalence difficult to precisely determine (absent CMS guidance) are the subjective requirements that may be required in addition to the more traditional actuarial measures of actuarial cost value. Such subjective tests may involve the use of service-related contributions, the use of formularies, use of mail order features, etc.

General Implementation

3. We would like to review two cases involving situations where a plan just misses the definition of actuarial equivalence ("AE") by a small plan design provision, and an employer decides to amend its program for this small change in order to take advantage of the Part D subsidy:
 - Case I – an employer opts to wait for final CMS guidance, and
 - Case II– an employer opts to recognize the subsidy before final CMS, final CMS guidance is issued later and the employer finds their plan actually failed the final AE requirements.

Case I - Since no partial subsidy is available, any plan design issue causing a plan to fail actuarial equivalence in the final CMS guidance will cause an employer to forfeit recognition until their plan is amended to rectify the problem. It appears that, any plan amendment required to meet actuarial equivalence standards, even if such amendment is quite immaterial in terms of plan value, means that the employer has prospective only treatment of the Act from the announcement date of the plan amendment, pursuant to paragraph 15.

Case II – In Case II, let’s assume an employer makes a reasonable determination that their plan is actuarially equivalent and adopts recognition prior to final CMS guidance. The employer adjusts retroactively for the value of the subsidy in accordance with FAS 106-b. The final CMS guidance determines that a plan amendment is needed to meet the final AE requirements. We further assume that the actual plan amendment is not significant in cost nor provisions, and provides somewhat more generous benefits to meet the final AE requirements. In fact, the plan amendment would otherwise be considered “immaterial” on its own.

We suggest for consideration requiring modified reporting only in cases where the plan amendment, if required, is a material amendment. We are suggesting a distinction between a significant, material amendment versus a minor adjustment in plan provisions.

In the case of an immaterial amendment adopted to comply with final CMS guidance, such as in Case II, we suggest that the employer not restate prior results but instead be required to reflect the impact of the amendment with the next regularly scheduled measurement of plan assets and obligations. In case of a material amendment, however, we suggest the employer restate prior results, as the prior assumption that the plans were actuarially equivalent was not accurate and recognize the impact of the plan amendment and the Act prospectively from the date of the material amendment.

4. Paragraph 23 describes situations where employers have plan amendments “occurring” before and after the measurement dates in “(a) or (b)”. We suggest clarification of the use of the term “amended” and the term “occurring” for purposes of this guidance. Specifically, such terms refer to the date that the substantive plan was amended and communicated between the two parties (the employer and the participants).
5. In paragraph 28, the situation of later guidance enabling a plan to determine it is actuarial equivalent is described. A re-measurement is conducted as of the “date that actuarial equivalency is determined”. We suggest that this date be defined as the date that final guidance from CMS is issued (that is, the issuance date of the regulations as being the first possible date such determination could be made).
6. In paragraph 15, FAS 106-b addresses how a change in guidance will impact an employer’s financial statements, in cases where the employer has already recognized the impact of the Act. Such differential is treated as a gain/loss and re-measurement is conducted upon the release of the final guidance. We interpret such date to be when such regulations are issued, rather than any determination date thereafter. Further, we suggest clarifying in the final guidance any retroactive restatements required in this case.

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We are available to discuss any of these issues, as members of the Staff require. Thank you.

Sincerely,



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