

December 29, 2003

Mr. Lawrence Smith
Director, TA&I—FSP
Financial Accounting Standards Board
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Letter of Comment No: 11
File Reference: FSPFAS106A

Proposed FASB Staff Position No. FAS 106-a, Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the Act).

Dear Mr. Smith:

We are pleased to respond to the proposed FASB Staff Position (FSP), Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the Act).

We recognize that the passage of the Act has created a financial reporting dilemma. Passage of the Act represents an event that affects the measurement of the postretirement benefit obligation of a number of employers. Standards existing at the date of the passage of the Act require accounting for the effects of legislation once enacted. However, while some employers believe they can estimate the effects of the legislation and are prepared to account for them, others believe that the effects of the legislation would be difficult to estimate without further regulatory guidance on the administration of the Act. In addition, there appears to be some diversity in views as to the appropriate method to be used to account for the effects of the legislation under FASB Statement No. 106, *Employers' Accounting for Postretirement Benefits Other Than Pensions* (FAS 106).

Accounting Recognition

The proposal in the FSP is an unusual approach to this dilemma. The proposed approach prohibits accounting recognition of an economic event that has occurred. Although clarification and further development of the provisions of the Act will certainly improve estimates of its effects, it would appear that the more compelling reason for delaying accounting recognition lies with the uncertainty about the appropriate accounting method under FAS 106 and concerns about potential diversity in practice absent definitive guidance. Accordingly, we believe the Board should ask the Emerging Issues Task Force (EITF) to immediately address the accounting issues. Alternatively, the FSP should provide some indication as to when and how the accounting issues will be resolved. Our recommendations regarding the timing of such guidance are presented in greater detail later in this letter.

Disclosure

We see no support in the accounting literature for prohibiting a company with the ability to estimate the effects of the Act from disclosing such information. We believe that the FSP should require disclosure of the effects of the Act if they can be reasonably estimated and disclosure of the inability to estimate and the reasons why if that is the case. Companies that disclose their estimates should be required to describe the accounting basis for their estimates and key assumptions included in any hypothetical calculations or sensitivity analysis consistent with FASB Statement No. 132 (revised 2003), *Employers' Disclosures about Pensions and Other Postretirement Benefits*.

Alternatively, the FASB staff should acknowledge in the FSP that some enterprises may be able to reasonably estimate the effects of the Act and, prior to issuance of any new guidance on how to account for the subsidy, should permit those companies to disclose the amount of the APBO that is expected to qualify for the 28% subsidy from the government. Some companies believe that their current plans will pass the "actuarial equivalence" threshold and that they will be eligible for the 28% subsidy in the Act. In reaching this conclusion, those companies may have considered the specific circumstances of their plans such as: participants currently have no out-of-pocket costs; the formulary of the plan is comprehensive; participants are otherwise eligible to participate in the Medicare Part D prescription plan; a high quality utilization review process exists; actuaries and independent accountants believe that the actuarial computations can be relied upon; and a robust data collection and reporting system exists to capture prescription costs per participant.

Timing of Guidance

Communication of an expected time frame for final accounting guidance for the Act would reduce confusion. Therefore, the FSP should indicate when that guidance is expected. Two workable time frames exist. Ideally, guidance should be provided by the end of the first quarter of 2004, with an implementation date required for years ending after December 15, 2004. Early adoption should be encouraged and retroactive application permitted. This approach would allow constituents who need more time to address the educational, decisional and implementation challenges they currently face. It will permit those who can early adopt to do so.

In any case, the final accounting guidance should be issued no later than the end of the second quarter of 2004. Some companies may amend their plans in response to the Act prior to May 2004 to permit eligible participants to use the interim discount drug card. The use of the interim drug discount card would impact actuarial estimates that should be reflected in the measurement of the plan obligation. Additionally, companies may amend their plans in the near future to qualify their plans for the subsidy, or to meet the actuarial equivalency guidelines. Failure to address timely the accounting for the actual effects of participants' use of the interim discount drug card or other amendments could result in misleading information regarding the plan liability and costs.

In addition, some entities may issue financial statements for a fiscal period ended after December 7, 2003, but prior to the issuance of the final FSP. Because these entities will not have a final FSP to look to for guidance on how the account for or disclose the impact of the Act, it is possible that these entities may not report in a manner consistent with the requirements of the final FSP. Accordingly, we believe that the FASB should provide guidance for such entities on the application of the guidance in the final FSP to those entities (e.g., should prior financial statements be restated, should a cumulative effect be recorded, or should there be some other form of transition to the application of the requirements in the final FSP?).

Clarification

The proposed FSP states:

A sponsor is encouraged to provide additional disclosure of any information that the sponsor has and believes is appropriate for the reader to understand the Act's possible economic consequences for the sponsor including whether the sponsor intends to amend the plan in light of the new legislation.

The staff should clarify the intent of the phrase "possible economic consequences" and how those consequences should be measured and disclosed, given that the proposed FSP also states that "...it would be premature to disclose any anticipated effects regarding the accounting in subsequent periods." For example, would a sponsor be precluded from disclosing the estimated effects of the Act on the APBO, since the APBO is an accounting measure?

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If you have any questions concerning our comments, please contact Naomi Erickson at (203) 761-3138 or William Platt at (203) 761-3755.

Yours truly,

Deloitte & Touche LLP