



August 18, 2006

Technical Director
Financial Accounting Standards Board
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Norwalk, CT 06856-5116



LETTER OF COMMENT NO.

121

By email to: director@fasb.org

Re: File Reference No. EITF0604

Director:

First Horizon National Corporation appreciates the opportunity to comment on the Draft Abstract of EITF Issue No. 06-4, *Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements* (the "Draft Abstract"). In our view, implementation of the Draft Abstract's provisions would result in an accounting model that is not reflective of the economic reality that underlies typical endorsement split-dollar life insurance arrangements and could result in an unintended negative financial impact on financial institutions. We believe that changes in accounting and reporting for transactions should produce financial information that is more decision-useful to the users of financial statements by accurately representing a company's economic status. As detailed in the following discussion, we believe that the Draft Abstract falls short of this objective.

Typical Endorsement-Split Dollar Arrangement

In a typical endorsement split-dollar arrangement, the employer purchases life insurance on an employee and separately agrees with that employee (through an endorsement to the policy) to split the death benefit between the employer and the designated beneficiary. The split of the death benefit is based on a pre-established formula (e.g., a multiple of salary is provided to the beneficiary with the employer receiving death benefits in excess of the beneficiary's portion). As part of the agreements with the insurance carrier and the employee, the employer retains the ability to cancel the policy and is under no obligation to pay the beneficiary in the event that such an election is made. Upon death, the insurance carrier remits the appropriate death benefits to the beneficiary and the employer. Should the insurance company fail to meet its obligation under the contract, the employer does not have an obligation to the beneficiary. Over the life of the arrangement, the cash surrender value of the insurance contract is considered a general asset of the employer and subject to the claims of creditors.

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Characteristics of Decision-Usefulness

Statement of Financial Accounting Concepts No. 2, *Qualitative Characteristics of Accounting Information*, provides the following discussion on what makes financial information decision-useful.

Relevance and *reliability* are the two primary qualities that make accounting information useful for decision making. **Subject to constraints imposed by cost and materiality, increased relevance and increased reliability are the characteristics that make information a more desirable commodity—that is, one useful in making decisions.** If either of those qualities is completely missing, the information will not be useful. Though, ideally, the choice of an accounting alternative should produce information that is both more reliable and more relevant, it may be necessary to sacrifice some of one quality for a gain in another.

Relevance

The capacity of information to **make a difference in a decision by helping users to form predictions about the outcomes of past, present, and future events or to confirm or correct prior expectations.**

Reliability

The quality of information that assures that information is reasonably free from error and bias and **faithfully represents what it purports to represent.**

Application to Typical Endorsement Split-Dollar Arrangements

The Draft Abstract proposes that employers recognize a liability for the ultimate payable to an employee's beneficiary when, in fact, the employer has effectively mitigated the risk associated with this future payout through the offsetting (commonly referred to as a "funding") arrangement with an insurance carrier. The employer controls both sides of the arrangement through cancelability provisions and is not exposed to financial risk because it is not obligated to pay benefits to the beneficiary if the insurer defaults on its obligation. By requiring the recognition of the liability to the employee's beneficiary in accordance with Statement of Financial Accounting Standards No. 106, *Employers' Accounting for Postretirement Benefits Other Than Pensions* ("SFAS 112") or Accounting Principles Board Opinion No. 12, *Omnibus Opinion—1967* ("APB 12"), and continuing to recognize the funding contract at cash surrender value under FASB Technical Bulletin 85-4, *Accounting for Purchases of Life Insurance* ("FTB 85-4"), a mismatch in measurement of the liability to the beneficiary (death benefits payable to the beneficiary) and asset associated with management's risk mitigation efforts (total death benefits to be paid by the insurance carrier) will be embedded within financial statements. Such a disparity in measurement methodologies will introduce an additional level of accounting-rules induced complexity into financial statements without improving the relevance or reliability of the information presented.

Assets and Liabilities

The following definitions were obtained from Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements*.

Assets

25. Assets are probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events.

26. An asset has three essential characteristics: (a) it embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows, (b) a particular entity can obtain the benefit and control others' access to it, and (c) the transaction or other event giving rise to the entity's right to or control of the benefit has already occurred. Assets commonly have other features that help identify them—for example, assets may be acquired at a cost and they may be tangible, exchangeable, or legally enforceable. However, those features are not essential characteristics of assets. Their absence, by itself, is not sufficient to preclude an item's qualifying as an asset. That is, assets may be acquired without cost, they may be intangible, and although not exchangeable they may be usable by the entity in producing or distributing other goods or services. Similarly, although the ability of an entity to obtain benefit from an asset and to control others' access to it generally rests on a foundation of legal rights, legal enforceability of a claim to the benefit is not a prerequisite for a benefit to qualify as an asset if the entity has the ability to obtain and control the benefit in other ways.

Liabilities

35. Liabilities are probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events.

36. A liability has three essential characteristics: (a) it embodies a present duty or responsibility to one or more other entities that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand, (b) the duty or responsibility obligates a particular entity, leaving it little or no discretion to avoid the future sacrifice, and (c) the transaction or other event obligating the entity has already happened. Liabilities commonly have other features that help identify them—for example, most liabilities require the obligated entity to pay cash to one or more identified other entities and are legally enforceable. However, those features are not essential characteristics of liabilities. Their absence, by itself, is not sufficient to preclude an item's qualifying as a liability. That is, liabilities may not require an entity to pay cash but to convey other assets, to provide or stand ready to provide services, or to use assets. And the identity of the recipient need not be known to the obligated entity before the time of settlement. Similarly, although most liabilities rest generally on a foundation of legal rights and duties, existence of a legally enforceable claim is not a prerequisite for an obligation to qualify as a liability if for other reasons the entity has the duty or responsibility to pay cash, to transfer other assets, or to provide services to another entity.

Since management has the ability to control (cancel) both the funding policy with the carrier and the contract with the employee, we fail to see any difference in the definition of probable as used above for both assets and liabilities. In fact, since the employer can cancel the contract at its discretion, it can be inferred that part (b) of the definition of a liability is not met and no liability should be accrued. This causes us to believe that neither the asset nor the liability related to the future death benefits should be recognized in the financial statements.

Receipt of benefits from the insurance carrier and payment of benefits to the employee's beneficiary are equally probable of occurrence, especially since the employer is not obligated to pay the beneficiary if the insurer defaults under its obligation. In such a scenario, the beneficiary is just as likely to receive benefits under the plan (whether directly from the insurance carrier or through the employer) as the employer is to receive benefits from the insurance carrier. It is the solvency of the insurance carrier which will, in all likelihood, determine whether the benefits are ultimately paid. Therefore, we find it difficult to understand why different accounting models would be applied to the asset and liability sides

of endorsement split-dollar arrangements. Either the contract with the insurance carrier effectively settles the liability to an employee's beneficiary as presented in View B of the Issue Summary No. 1, Supplement No. 1 for the Draft Abstract (the "Supplement") or both contracts should be separately recognized using the same measurement methodology. We believe that the very nature of typical endorsement split-dollar arrangements indicates that the probable liability to the beneficiary is settled through the equally probable distribution of cash by the insurance carrier.

Insurance Carrier Insolvency

In the event that the insurance carrier becomes insolvent, the employer will act in its best interests. Termination of the arrangement with the employee will occur, but an employer may decide to offer alternative (new) life insurance benefits on a self-insured basis (which does not constitute a split-dollar arrangement). As discussed in the Supplement, such a continuation of benefits is not the subject of accounting debate because clearly a liability must be recognized under APB 12 or SFAS 106 for the "unfunded" future payable to the employee's beneficiary.

Regulatory Capital Effects

As a provider of diversified financial services with a national bank subsidiary, we are regulated by both the Federal Reserve and the OCC and certain capital constraints are placed on us to ensure the continued viability of our institution. Absent recognition for the funding arrangement with the insurance carrier, the Draft Abstract's requirement to recognize a liability for the death benefit payable to the employee's beneficiary, with an offset to retained earnings, will have significant unintended consequences to our regulatory capital ratios. To address this risk, we may find it necessary to issue additional capital, which necessitates real cash outflows, either in the form of dividends (equity) or interest (debt). We strongly believe this should be considered as comments to the Exposure Draft are addressed because adverse economic effects should not occur as a consequence of an accounting model that is not reflective of economic reality.

Conclusion

We believe that adoption of the Draft Abstract will result in financial reporting that lacks relevance and reliability in reporting the economic status of an employer/sponsor of typical endorsement split-dollar life insurance arrangements. Further, failure to acknowledge the economic status of typical endorsement split-dollar arrangements will result in a negative impact on financial institutions by triggering an increased possibility of capital issuances to meet regulatory guidelines. We have difficulty in understanding how recognition of a liability under SFAS 106 or APB 12 and recognition of an asset for the funding contract under FTB 85-4 will provide a true picture of the economic status of the employer. We believe that entry into the funding contract effectively settles the liability to the employee's beneficiary and the only recognizable asset or liability is the cash surrender value of the contract with the carrier. However, in the event that the EITF and FASB determine that a liability should be recognized, we cannot see the reason in measuring the probable payment on death under different measures for the employer's asset and liability when both are controlled by the employer, triggered by the death of the insured employee, determined in accordance with a policy's provisions and dependent upon the insurer's ability to satisfy its obligation. Given this contradiction, we believe this guidance should be postponed until the FASB completes its work on the conceptual framework revisions related to recognition of assets and liabilities.

If you have any questions or comments regarding the comments presented in this letter, please contact me at (901) 537-1937.

Sincerely,

/s/ Shawn P. Luke

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