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Mr. Lawrence W. Smith  
Chairman, Emerging Issues Task Force  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116



LETTER OF COMMENT NO.

116

Re: EITF Issue 06-4, "Accounting for Deferred Compensation and Post-retirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements"

Dear Larry:

The American Bankers Association is responding to the recent tentative conclusion reached by the Emerging Issues Task Force (EITF) on Issue 06-4, "Accounting for Deferred Compensation and Post-retirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements" (the consensus). We are concerned about the potential impact of the consensus and the misleading accounting that will result, and we encourage the Board not to ratify the EITF's decision.

The ABA brings together all categories of banking institutions to best represent the interests of the rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes the ABA the largest banking trade organization in the country.

Central to our concerns about the consensus are: 1) whether a liability indeed is created that rests with the policyholder, 2) the double counting of liabilities in the marketplace that will result from requiring policyholders and insurers to record obligations related to the endorsed portion of the contracts, 3) the misleading impact of the accounting and the misrepresentation of the economics to users of financial statements, 4) the lack of a thorough cost-benefit analysis, 5) flawed assumptions within the tentative consensus, and 6) the impact on regulatory capital.

Do Endorsement Split-Dollar Life Insurance (ESD) Policies Result in Liabilities?

Paragraph 3 of the consensus concluded that the issue is whether the postretirement benefit associated with an ESD policy is settled when signed. The EITF, in its deliberations, concluded that the endorsement represents a liability to the policy holder. We would question why this is a liability if the policyholder is never liable for any payments to its employees under ESD policies. It appears that the policyholder must record a liability partly due to not retaining 100% of the benefits, thus resulting

in compensation to the employee. However, this appears to be based on opportunity cost rather than on whether the policyholder has actually incurred a liability. A gross-up of the assets to be received by the policyholder (that will be used to settle the liability) does not appear to be permitted under the consensus. This is clearly an inaccurate periodic expense without the offsetting income, the result being periodic expense with a large income boost when the policy is either cancelled or paid. It is difficult to understand where the improvement to accounting lies.

#### Double Counting Liabilities

Under the proposed treatment for ESD policies, both the insurance company directly responsible for the payments to the employee's beneficiary and the policy holder would book a liability or contra asset for the same potential payments. The obligation to make the payments to the insured employee, however, is strictly that of the insurer in a properly executed ESD policy. The policy holder at no point assumes the responsibility for funding the employee's beneficiary. This proposal does not accurately or appropriately reflect the obligation to make payments and in fact amounts to a double counting of liabilities.

#### Improper Assumptions

The EITF considered several comment letters during its deliberations, which were summarized in the consensus. After speaking with several experts with banks and insurers, we learned that the experts who write and the companies that purchase these ESD policies consider remittance arrangements (in which the policyholder receives payment from the insurer and remits payments to the beneficiaries) to be flawed contracts. This is because such arrangements obligate employers to their employees, if only momentarily, for the payment of the insurance proceeds. Therefore, many underwriters take pains to execute very specific contracts that do not allow for the remittance from insurer to policy holder to employee-beneficiary. This absence of obligation between employer and employee should be sufficient basis to determine that the liability lies with the insurer, both contractually and in fact. (Arguably, even if such remittance arrangements are used, a future asset would also exist to offset the liability.)

A second presumption in the tentative consensus is in Paragraph 5 where the staff presents that the EITF believed that policyholders are subject to the favorable and unfavorable experiences of the insurance company. In truth, policyholders are not generally subject to the experiences of the insurer and, even so, retain the ability to cancel the agreement at any time, thereby relieving them of any future costs.

#### Misrepresentative and Misleading Result

The consensus creates an imaginary obligation to be presented on the balance sheet that is in direct contradiction to the economics of the transaction. To require a company to recognize a liability for a payment for which they will never be liable is to require accounting that does not reflect the underlying transaction. We believe this will misrepresent the transaction and will mislead users of financial statements.

#### Cost-Benefit Analysis Failure

The increased recordkeeping and calculation to support these proposed liabilities is not offset by a corresponding increase in the accuracy or usefulness. In fact, the

consensus will burden the policyholder with additional preparatory work and the need for tracking and will detract from the usefulness of the financial information presented to users. We believe that a rigorous cost-benefit analysis of the consensus should be undertaken, and we doubt that it would reflect favorably upon the proposal.

#### Impact on Regulatory Capital

A final issue to which financial institutions are also sensitive is the resulting negative impact on regulatory capital. Should the consensus be ratified, in each instance of an ESD policy at a bank, the bank will need to reduce its regulatory capital available for investment by the amount of the liability required to be recognized. This capital change is a result of an accounting treatment that does not change the cash position of the bank, but limits the amount of funds with which to conduct business.

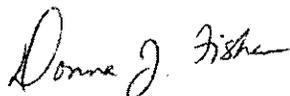
If the consensus is ratified by the FASB, we request a delayed effective period to allow financial institutions and others to deal with the resultant capital shift. This is coming on the heels of the pending pension changes and will further restrict banks' ability to conduct lending and investing operations.

#### Conclusion

We believe that the broad stroke approach taken by the EITF in its current consensus does not faithfully report the economics of ESD policies. In order to address the accounting issues properly, more research should be conducted by the EITF and FASB to ensure the proper accounting for ESD policies.

Thank you for your consideration of these issues. Please call me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Donna J. Fisher". The signature is written in a cursive style with a large initial "D".

Donna J. Fisher