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Financial Accounting Standards Board 401 Merrit 7 Norwalk, CT 06856-5116 * E I T F O 6 O 4 D A *

LETTER OF COMMENT NO.

70

Delivered via email to director@fasb.org

Re: File Reference No. EITF0604

Thank you for the opportunity to respond to FASB Emerging Issues Task Force Draft Abstract IETF Issue 06-4, (Abstract) Charon Planning is an executive benefits consulting firm that structures and administers nonqualified benefit plans which include endorsement split dollar arrangements. We believe the EITF's position should not be ratified as proposed. We further suspect that the consensus on this issue has been reached based on an incomplete understanding of these programs and as such will result in inaccurate financial accounting reporting.

Pursuant to your instructions, we have provided brief responses to the issues and the specific paragraph or groups of paragraphs which we believe do not accurately reflect the market place in its current form. Essentially we believe the issue at hand is not so much a function of life insurance accounting but rather a question about the applicability of FAS 106.

The suggestion for comment has indicated your desire to have comments address and identify "the issue and specific paragraph or groups of paragraphs to which they relate and clearly explain the issue or question." Pursuant to this direction, we offer the following comments to the paragraphs of the Draft Abstract below.

A description of an endorsement split dollar program was provided in Paragraphs 1-4. Generally there is a significant amount of flexibility in how the programs can be designed. While we agree with most of the descriptions provided, we believe further design clarity must be provided. As written, the description is not representative of the type of split dollar design that we see commonly used. The structure of the arrangement should be determinative of whether or not there is a bona fide post employment benefit obligation.

- Under a properly design program, there is never an irrevocable obligation by the employer to pay a post-retirement death benefit to the employee.
- A properly designed endorsement split dollar arrangement is structured solely as an agreement to share in the life insurance proceeds upon the death of the insured participant and is conditioned upon the life insurance being in-force at the time of

death. In all arrangements that we are aware of the employer may but is not required to pay premiums beyond the point of retirement. In a typical bank owned life insurance transaction, there is no requirement or ability to pay premium beyond the initial transaction.

- If the policy is cancelled or surrendered at any time, the agreement terminates in its entirety.
- The portion of the policy shared with the employee is limited to the amount of the death benefit in excess of the policy cash value. This is referred to the net-amount-at-risk.

In consideration of items noted above, we do not agree with the Task Force's consensus that a post retirement obligation exists under an endorsement split dollar life insurance arrangement that should be recognized as a liability for future benefit payments in accordance with Statement 106 or Opinion 12.

- In all circumstances, there is never a legal obligation for the employer to make a payment to employee. In point of fact the payment, if it occurs, will be made by the insurance company not the employer.
- The legal obligation to make this payment to the employee is bourn solely by the insurance company and exists at all times the endorsement agreement is effective.
- The type of insurance contract (participating or non-participating) has no impact or bearing on whether or not a post employment benefit obligation exists. As described above, under a properly designed endorsement arrangement, the portion of the death benefit shared with the employee is limited to a potion of the insurance policy we commonly define that portion as some or all of the net amount at risk (described above). Unfavorable experience of the insurance company and policy may have a direct impact on policy cash values and a corresponding impact on a participant's death benefit amount, but has no impact on the existence of a liability which may, or may not, exist pursuant to a contingent post retirement death benefit. Investment/policy performance is a benefit amount consideration, not a cornerstone to the existence of a contractual obligation.
- Insurance company bankruptcy/liquidation is a risk that exists for non-payment of the benefit. This risk exists for both participating and non-participating contracts. In the event of an insurer did becoming insolvent, and policies lapsed as a result, the agreement would terminate along with any obligation to pay a future benefit, as outlined in the agreement between the employer and employee.

Example 1

Year l	Premium	Cash Value	Death Benefit	Net Amount at Risk	
1 041	Telliuli	, arac	Belletik	- GI TRION	
	100,000	100,220 103,470 107,010 110,910 115,160 119,850 124,960 130,590 136,720 143,470 150,850 158,600 166,740 175,290	178,860 180,200 181,960 184,260 187,020 190,350 194,180 198,630 203,660 209,410 215,880 222,700 229,920 237,550	78,640 76,730 74,950 73,350 71,860 70,500 69,220 68,040 66,940 65,940 65,030 64,100 63,180 62,260	Endorsement Split Dollar benefit would be limited to this amount

We also believe EITF's position will lead to inaccurate financial reporting. If the obligation is reflected as a liability and subsequently settled through the insurance contract with no cash transaction occurring by the employer, then the employer would be required to reverse off the accumulated liability. In addition, if the EITF's position is upheld, the employer in essence would be required to recognize a current liability that would be funded from a portion of the future gain realized from insurance policy death proceeds. Under current rules, employers are not permitted to recognized that future death benefit gain as income. In our opinion, it's illogical to require a transaction to record a current liability directly associated with a portion of this future gain and simultaneously ignore the remaining gain as income.

Example 2 - Assumes Death Benefit Paid in Year 15 Recommended Accounting Approach

	Proceeds	Proceeds		
	Paid to	Paid to	Employer	Insurance
	Participant	Employer	Cash Inflow /	(Income)
Year	from Insurer	from Insurer	(Outflow)	TB 85-4
		 "		
1	0	0	(100,000)	(220)
2	0	0	0	(3,250)
3	0	0	0	(3,540)
4	0	0	0	(3,900)
5	0	0	0	(4,250)
6	0	0	0	(4,690)
7	0	0	0	(5,110)
8	0	0	0	(5,630)
9	0	0	0	(6,130)
10	0	0	0	(6,750)
11	0	0	0	(7,380)
12	0	0	0	(7,750)
13	0	0	0	(8,140)
14	0	0	0	(8,550)
15	61,330	184,260	184,260	(8,970)
	Total Employ	84,260		
		(84,260)		

Example 3 - Assumes Death Benefit Paid in Year 15 EITF Position

	Proceeds	Proceeds			Post	
	Paid to	Paid to	Employer	Insurance	Retirement	Total
	Participant	Employer	Cash Inflow /	(Income)	Expense	(Income)/
Year	from Insurer	from Insurer	(Outflow)	TB 85-4	(Reversal)	Expense
	- -					 -
1	0	0	(100,000)	(220)	2,842	2,622
2	0	0	0	(3,250)	2,984	(266)
3	0	0	0	(3,540)	3,133	(407)
4	0	0	0	(3,900)	3,290	(610)
5	0	0	0	(4,250)	3,455	(795)
6	0	0	0	(4,690)	3,627	(1,063)
7	0	0	0	(5,110)	3,809	(1,301)
8	0	0	0	(5,630)	3,999	(1,631)
9	0	0	0	(6,130)	4,199	(1,931)
10	0	0	0	(6,750)	4,409	(2,341)
11	0	0	0	(7,380)	4,630	(2,750)
12	0	0	0	(7,750)	4,861	(2,889)
13	0	0	0	(8,140)	5,104	(3,036)
14	0	0	0	(8,550)	5,359	(3,191)
15	61,330	184,260	184,260	(8,970)	(55,703)	(64,673)
Totals	61,330	184,260	84,260	(84,260)	(0)	(84,260)
	Total Employer Cash Flow:		84,260	Overstaton	Overstatement of	
Total Accounting (Income):				income in	_	(84,260)

The Abstract requested suggestions for alternatives if the respondent disagreed with the tentative conclusions.

We would like to see a more realistic definition of "settlement" referenced in FAS 106. We believe the current definition may be outdated and may require modification to apply to the products and plan designs available in the insurance market today. Additionally, we would also like to see as part of a modification to the financial reporting of these plan designs, future liabilities and future benefits reported equally, thus preserving the logical concept of accounting symmetry. If the benefit is contingent upon the gains from a life insurance policy (participating or non-participating) and the agreement properly identifies how policy benefits will be shared in all instances, i.e., if the proceeds are payable from the net-amount-at-risk, then an accrual of a future liability is not required.

The essential issue, we believe, is whether or not there is a benefit promise that requires any future transactions by the employer. If transactions e.g. benefit payments are required to be made from an employer to an employee irrespective of the presence or size of an insurance contract, then we agree, the obligations need to be expense during the service periods that give rise to the obligation. We do not find this fact pattern in many, if any, split dollar arrangements.

Transition - Paragraph 6

In the event FASB ultimately comes to a reporting consensus regarding the accounting of the liability regardless of the contractual limitations on such liability, we are hopeful that the implementation of the clarified rules would only be prospective from a fixed implementation date. The business community has relied on some realistic and logical interpretations of current accounting pronouncements in the development of their insurance programs. To implement a change in position regarding the accounting of certain liabilities would unfairly harm some, and reward others, as it relates to their bottom line accounting and reporting. We would hope that the accounting treatment of a corporation's current holdings would be allowed to continue so long as there has not been a material modification of the underlying insurance contract, subject to modifications/changes through a 1035 exchange necessitated by fiduciary obligations, and accounting treatment has been consistent pre and post any related post retirement reporting FASB pronouncement. In the alternative, if FASB decides to implement a change in accounting policy retroactive to the date of insurance purchase, we would like to have the ability to accommodate the adjustment to the corporation's liability aggregation over a period of years, thus avoiding a large one year impact to the corporation's balance sheet.

In closing, we understand the function of FASB to be the assurance that companies accurately reflect their financial position. We believe that the proposed reporting would result in an

inaccurate reflection of the financial impact of these programs. Under endorsement split dollar arrangements, unlike death benefit plans where the employer pays the benefit, the insurer pays the beneficiary directly and the risk of nonpayment is eliminated. If the future liability is booked on the employers financial reports, and the benefit is paid directly by the insurer to the beneficiary, the employers financial reports would be misleading. While we understand it is difficult to produce a single rule which could logically be applied in every scenario, we feel the current proposed pronouncement does not adequately address, or correct, the current issue and we encourage the Board not to ratify the EITF's decision

We thank you for the opportunity to comment on this issue. Please contact us with any questions or clarification you may require.

Sincerely,

David O. Brown General Counsel