



LETTER OF COMMENT NO. 88



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Michael P. Smith
President & CEO

August 4, 2006

Mr. Lawrence W. Smith
Chairman of Emerging Issues Task Force
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 0685605116

Via E-mail: jerichter@fasb.org

RE: EITF Issue 06-4 "Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements"

Dear Mr. Smith:

The New York Bankers Association (NYBA) appreciates the opportunity to comment on the draft abstract for EITF Issue No. 06-4, "Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements." We disagree with a number of the provisions of the consensus (a few of which we will focus on in this letter) and are concerned both about its potential impact and the misleading accounting that may result. We encourage the Board not to ratify the EITF's decision. If, however, the proposed guidance is finalized, we believe additional time should be given for implementation.

NYBA is comprised of the community, regional and money center banks and thrift institutions doing business in New York State, whose aggregate assets exceed \$4 trillion and which have more than 340,000 New York employees. Many Bank Owned Life Insurance Plans (BOLI) plans in New York have been carefully structured to include such a benefit to remain compliant with strict New York insurable interest and regulatory requirements.

Underlying Premises

The proposed consensus and the issue summaries leading up to it all imply a premise that, upon entering into an endorsement split-dollar (ESD) arrangement, the employer has assumed a liability to pay a death benefit, for which it acquires a life insurance policy to fund that obligation. We believe, however, that this premise is flawed in several key respects. First, in a true ESD arrangement, the employer is never obligated to pay a death benefit directly to the beneficiary either prior to or upon entering into the split-dollar arrangement. The employee receives his benefit payment directly from the insurance carrier. (Those unusual circumstances, in which an employer contractually guarantees payment of the death benefit, fall outside the definition of a basic split-dollar life insurance arrangement.) Thus the assumption in the consensus that the employer has a liability to the employee to pay a death benefit, is inaccurate and any liability that would be recognized would simply be reversed at termination or death.

The abstract also states in its description of a basic ESD arrangement, that some policies are structured so that all proceeds are paid directly to the employer from the insurance company. The employer would then be responsible for remitting the beneficiary's share. This description, however, is not an accurate depiction of an "endorsement split-dollar" arrangement. This term specifically describes a formal arrangement in which a policy endorsement is executed directing the insurance company to make split payments of the death benefit. The portrayal by the EITF of other arrangements as ESD insurance, has, we believe, led it to an incorrect conclusion as to the proper accounting treatment for true ESDs.

Additionally, the EITF has inaccurately presumed that policyholders are subject to the favorable and unfavorable experience of the insurance company. In the majority of these arrangements, the death benefits are contractually guaranteed based on the state product filing.

The Consensus Will Yield To Misleading Accounting Statements

We believe that the requirement to accrue an obligation to an employer, who, under an ESD arrangement, will never have the actual obligation to pay the employee's beneficiary, will result in misleading financial statements. Such a requirement to book a liability on the balance sheet, will lead the reader of the financial statements to incorrectly conclude that the employer will have to settle that liability with cash at some future time. As this is not the case, this requirement would seem unnecessary at best, and confusing and misleading at worst.

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Additionally, the requirement to accrue the present value of a post retirement death benefit delivered by an insurance policy in an ESD arrangement, creates a duplication of expense for the employer, as the cost of the insurance coverage is already reflected in the net growth of the policy cash values. This, too, misstates the economic impact of the arrangement and creates a misleading financial statement for the employer. The fact that the insurance company (who is directly responsible for the payments to the employee's beneficiary) would also book a liability or contra asset for the same potential payments, would additionally create a double counting of liabilities, which would be neither accurate nor appropriate.

Impact to Regulatory Capital/Transition Period

This proposal, if finalized, will also negatively impact the regulatory capital of financial institutions. For every ESD policy at a bank, the institution will need to reduce its regulatory capital available for investment, by the amount of the liability required to be recognized. This reduction in capital would then be reversed in the future when the employee dies or terminates prior to vesting. This change would not alter the cash position of the bank, but would unnecessarily limit the amount of funds available for the bank to conduct its business.

In this regard - while we believe that the EITF consensus should not be ratified - we would urge that should it be finally approved, the implementation date be extended. The financial institutions affected by this proposal are subject to strict regulatory requirements for capital adequacy ratios. The current implementation date provides inadequate time for those institutions to analyze the impact on capital, and take corrective action to avoid falling out of regulatory compliance. We ask therefore, that the implementation date be postponed to fiscal years beginning after December 15, 2007.

NYBA appreciates the opportunity to comment on this issue with the EITF. This is a very important issue to many of our member banks who have had these plans in place for years. If you have any questions please do not hesitate to call. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is written in a cursive style with a large initial "M".

Michael P. Smith