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Ms. Suzanne Bielstein
Director — Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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1500-100

LETTER OF COMMENT NO. 12

File Reference No. 1500-100
Not-for-Profit Organizations: Mergers and Acquisitions — a replacement of APB Opinion No. 16 and related interpretive guidance provided in AICPA Audit and Accounting Guides, Not-for-Profit Organizations, and Health Care Organizations

Dear Ms. Bielstein:

Deloitte & Touche LLP is pleased to comment on the Exposure Draft of the proposed Statement of Financial Accounting Standards, *Not-for-Profit Organizations: Mergers and Acquisitions* — a replacement of APB Opinion No. 16 and related interpretive guidance provided in AICPA Audit and Accounting Guides, *Not-for-Profit Organizations*, and *Health Care Organizations* (the "Exposure Draft" or the "proposed Statement").

While we generally agree with many of the principles included in the Exposure Draft, for comparability purposes the Board should attempt to limit differences from the accounting principles to be included in the final Statement 141(R) to only those situations warranted by the unique characteristics of not-for-profit organizations (NPOs) that differentiate them from for-profit entities. For example, we understand that certain mergers and acquisitions of NPOs are specifically structured to be a true "merger of equals." This is in contrast to mergers between for-profit entities where a true merger of equals would be rare. Therefore, it may be difficult or impossible to reliably determine the accounting acquirer in these situations. Our views on this issue and responses to each of the questions posed in the Exposure Draft are included as an Appendix to this letter.

Deloitte & Touche LLP appreciates the opportunity to comment on the Exposure Draft. If you have any questions concerning our comments, please contact Stuart Moss at (203) 761-3042.

Yours truly,

Deloitte & Touche LLP

cc: Mike Fritz

Deloitte & Touche LLP
Appendix I
Responses to Notice for Recipients

Objective

Question 1—Are the objectives in this proposed Statement appropriate for all mergers and acquisitions by a not-for-profit organization? If not, for which mergers or acquisitions are those objectives inappropriate, why are they inappropriate, and what alternative objectives do you suggest? What criteria do you suggest to distinguish those transactions to which a different financial reporting objective should apply?

We generally agree with the Exposure Draft's objectives concerning fair value outlined in the Notice for Recipients. However, while we agree that fair value should be the measurement objective for most mergers and acquisitions of NPOs, in certain situations an acquirer cannot be reliably determined in a combination of two or more NPOs. In such situations the Board should consider fresh-start accounting. As expressed in paragraph B185 by one Board member, it is not clear whether recording the fair value of only one of the entities in such a combination is informative to users. This same concept would not be relevant to transactions between for-profit entities due to the rare or nonexistent nature of mergers of equals. This is supported by paragraph B42 of Statement 141, which states, as it relates to for-profit entities, that "the Board concluded that "true mergers" or "mergers of equal" are non existent or so rare as to be virtually nonexistent..."

Paragraph B26 of the Exposure Draft states that NPOs often enter into mergers and acquisitions for many of the same reasons that for-profit businesses do. While for-profit entities generally merge with one another to increase value for their owners (therefore, making a true "merger of equals" a rare event), NPOs generally enter into transactions as a way to increase both the services they provide and the resources available to achieve their overall mission. Because the mission and objective of many NPOs are similar, they often combine to achieve their mutual objectives without one acquiring the other. Therefore, transactions between NPOs are often structured to be a "merger of equals." The Board should consider providing specific criteria that can be used to identify a transaction that is a true merger of equals.

For those combinations in which an acquirer cannot be identified, we believe that fresh-start accounting, versus a pooling treatment, seems to produce the most relevant financial information. This is consistent with alternative methodologies considered by the Board in Statement 141, where paragraph B42 states "[i]f they were to be accounted for using a method other than the purchase method, the Board believes that a better method would be the fresh-start method."

Scope and Definitions

Question 2—Is the definition of a merger or acquisition by a not-for-profit organization appropriate? If not, why and how would you modify or clarify the definition?

Yes. However, to be consistent with the current guidance in paragraph 10 of Statement 141, the scope should include reference to a combination of two or more NPOs that transfer net assets to a newly formed entity.

Opt-Out Clauses

In certain instances, we understand that NPO mergers and acquisitions may feature an "opt-out" clause, exercisable by one or both entities that allow the exercising party the ability to terminate the merger without cause within a defined time period. If the clause is exercised, the entities cease to be merged and return to operating as individual entities as they existed before the attempted merger.

The existence of opt-out clauses, which may be unique to NPO mergers, raises recognition and measurement issues. Fundamentally, has a merger or acquisition has substantively occurred? To the extent that these clauses exist in practice, the Board should evaluate their effect on other significant provisions of the ED. Additionally, the Board should consider the following:

- Temporary or effective control,
- Value assigned, if any, to the clause in the purchase price allocation,
- Subsequent accounting upon execution,
- Associated contingent amounts due or receivable upon execution (e.g., whether the existence of a contingent amount upon execution result in the recognition of an asset or liability).

Question 3—Is the retention of and reliance on the existing guidance on consolidation in SOP 94-3 and the health care Guide appropriate? If not, why and what alternative do you suggest?

Yes.

Question 4—Are the definitions of a business and a nonprofit activity appropriate for distinguishing between a merger or acquisition subject to the provisions of this proposed Statement and a purchase of assets that would be accounted for in accordance with other generally accepted accounting principles (GAAP)? If not, why and how would you modify or clarify the definitions or the related guidance?

Yes.

Identifying an Acquirer

Question 5—Do you believe control [as described in existing literature, including SOP 94-3 and the health care Guide] and [the factors provided in paragraph 11 of the ED] are appropriate for determining the acquirer in a merger or acquisition by a not-for-profit NPO? If not, why and what additional factors or guidance should be considered?

Yes, except as described in response to Question 1.

Recognizing and Measuring the Identifiable Assets Acquired and Liabilities Assumed

> *Question 6 - Is the requirement of this proposed Statement to recognize and measure the identifiable assets acquired and liabilities assumed at their acquisition date fair values appropriate and does it provide more complete and relevant financial information? If not, why and what alternative do you suggest?*

We agree with the requirements of the proposed Statement to recognize and measure the identifiable assets acquired and liabilities assumed at their acquisition date fair values. Because we see no basis for any difference, accounting for business combination contingencies under this standard should not differ from the final requirements of proposed Statement 141R. Accordingly, the final standard should consider the results of the Board's December 2006 redeliberation and related staff research into alternative methods for measuring and recognizing business combination contingencies.

Recognizing and Measuring the Identifiable Assets Acquired and Liabilities Assumed

> *Question 7—Do you agree that identifiable donor-related intangible assets can be measured with sufficient reliability to be recognized separately from goodwill? If not, which identifiable donor-related intangible assets would not be measurable with sufficient reliability and why?*

Because donor related intangible assets have not typically been valued in practice, the FASB staff should consider soliciting input from valuation professionals on (1) whether the asset can be measured with sufficient reliably and (2) the valuation techniques that will be used in order to ensure that uniform valuation principles exist.

> *Question 8—Are the departures from recognition and measurement requirements in this proposed Statement appropriate accommodations to avoid the added difficulties and costs that would be incurred? If those accommodations are not appropriate, which exceptions would you add or eliminate and why?*

Except as noted in our response to Question 1, the departures from recognition and measurement requirements proposed in the Exposure Draft are appropriate accommodations to avoid the added difficulties and costs that would be incurred.

> *Question 9—Are there other types of identifiable intangible assets that are prevalent in not-for-profit organizations that should be included as examples in Appendix A?*

Yes. Appendix A should include additional examples that are unique to NPOs, such as the following:

- Licenses
- A certificate of need, which is required in certain jurisdictions to operate as a healthcare facility.

- Accreditations or certifications (e.g. Joint Commission accreditation, level 1 trauma center, sole community hospital status, etc.)
- Physician relationships (those that are contractual in nature)
- Patient lists or relationships (as distinct from customer relationships, because of privacy regulations and otherwise)
- Medical records and other data bases
- Sponsorships.

Should the Board agree to add any of the above to Appendix A, the final Statement should include an analysis of whether the asset meets the criteria for recognition apart from goodwill.

Recognizing and Measuring the Goodwill or the Contribution Received

Question 10—Is the requirement of this proposed Statement that the acquirer limit its recognition of goodwill to the amount that is purchased (either through the transfer of consideration or assumption of the acquiree's liabilities) appropriate? If not, why and what alternative do you suggest?

A single method for recognizing and measuring goodwill enhances comparability and, therefore our preference is for guidance consistent with the final provisions for for-profit entities under proposed Statement 141(R). As previously indicated, the Board should seek to minimize the number of inconsistencies between the standards for NPOs and for-profit entities. Nonetheless, we would not object to a final standard that contains the proposed guidance.

Question 11—Is the requirement of this proposed Statement that the acquirer recognize a contribution inherent in the merger or acquisition, measured as a residual, appropriate? If not, why and what alternative do you suggest?

Yes, except when an acquirer cannot be clearly identified, as discussed in our response to Question 1.

Measurement Period

Question 12—Do you agree that a measurement period should be provided? Do you agree that a limit of one year following the acquisition date is appropriate? If not, why and what alternative do you suggest?

We agree with both questions.

Assessing What Is Part of the Merger or Acquisition

Question 13—Do you agree that the guidance provided for assessing whether any portion of the transaction price or any assets acquired and liabilities assumed are not part of the acquisition accounting is appropriate? If not, why and what alternative do you suggest?

Yes.

Disclosures

> *Question 14—Do you agree with the disclosure objectives? Do you agree with the specified minimum disclosure requirements? If not, why and what alternative do you suggest?*

We agree with the disclosure objectives and the specified minimum disclosure requirements. Additionally, NPOs should disclose pertinent information regarding any opt-out clauses as discussed in our response to Question 2.

Disclosures by Public Entities

> *Question 15—Do you agree that those disclosures for public entities would be useful to the users (donors, creditors, and other users) of a not-for-profit organization's financial statements? If not, why and what alternative do you suggest?*

Yes.

Noncontrolling Ownership Interests in a Subsidiary

> *Question 16—How prevalent are noncontrolling ownership interests in a not-for-profit organization's consolidated financial statements? Is the guidance provided necessary and helpful? If not, why and what alternative do you suggest?*

Noncontrolling interests in business-type NPOs are not common to all NPOs, however they are common in the healthcare sector, generally in the form of either partial ownership interests in for-profit organizations or less-than-complete voting interests in the boards of related NPOs. The guidance provided in the Exposure Draft is helpful and should therefore be retained.

> *Question 17—Do you agree with the presentation requirements for noncontrolling ownership interests in a not-for-profit organization's consolidated financial statements? Do you agree with the accounting for noncontrolling ownership interests in a not-for-profit organization's consolidated financial statements and for the loss of control of subsidiaries? If not, why and what alternative do you suggest?*

Yes.

Benefits and Costs of the Proposed Requirements

> *Question 18—What costs and benefits do you expect to incur if the requirements of the proposed Statement were issued as a final Statement? How could the Board further reduce the related costs of applying the requirements of the proposed Statement without significantly reducing the benefits?*

Even though mergers and acquisition between NPOs are not as common as those between for-profit entities, the costs of applying the proposed Statement to those transactions would be significant. Included among these costs would be (1) the need for outside accounting assistance in applying certain of the provisions (especially for smaller NPOs that do not have a sophisticated financial reporting infrastructure), (2) determining the fair value of assets and liabilities to be recognized, including the use of third-party valuation specialists, and (3) subsequent accounting for any goodwill identified. The Board should carefully consider these additional costs and ensure that the incremental benefits provided by the proposed accounting exceed these costs.

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