

3600 American Boulevard West Third Floor Bloomington, MN 55431 www.mcgladrey.com

July 16, 2012

Ms. Susan M. Cosper Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

File Reference No. EITF-12C

Dear Ms. Cosper:

McGladrey LLP is pleased to comment on the Proposed Accounting Standards Update, *Business Combinations (Topic 805), Subsequent Accounting for an Indemnification Asset Recognized at the Acquisition Date as a Result of a Government-Assisted Acquisition of a Financial Institution* (the "proposed ASU"). We are supportive of the Financial Accounting Standards Board's efforts to address the divergent application of accounting guidance in this area. In that regard, we have included in this letter responses to certain of the "Questions for Respondents" posed in the proposed ASU as well as other recommendations for consideration in finalizing the proposed ASU.

**Question 1:** When a reporting entity recognizes an indemnification asset (in accordance with Subtopic 805-20) as a result of a government-assisted acquisition of a financial institution and subsequently a change occurs in the cash flows expected to be collected on the asset subject to indemnification, do you agree that (a) the reporting entity should be required to account for the change in the measurement of the indemnification asset on the same basis as the change in the assets subject to indemnification and that (b) any amortization of changes in value should be limited to the contractual term of the indemnification agreement (that is, the lesser of the term of the indemnification agreement and the remaining term of the indemnified assets)? If not, please explain those aspects of the requirement that you disagree with and why.

We agree that changes in the measurement of the indemnification asset should be accounted for on the same basis as changes in the asset subject to indemnification, with any amortization period resulting from this application limited to the lesser of the term of the indemnification agreement and the remaining term of the indemnified assets.

**Question 2:** Do you agree that the scope of this proposed Update should be limited to indemnification assets (in accordance with Subtopic 805-20) as a result of a government-assisted acquisition of a financial institution? If not, what other indemnification agreements have arisen in practice that the Task Force should consider for which there are concerns about the interpretations of the terms on the same basis and contractual limitations as referred to in paragraph 805-20-35-4?

Certain of the government-assisted acquisition arrangements include a clawback provision whereby if losses on acquired assets are less than certain pre-established thresholds, a portion of the related monetary benefit is shared by the acquiring financial institution with the FDIC (e.g.; through a payment made by the acquiring institution to the FDIC upon expiration of the loss-sharing agreement). We believe consideration should be given to expanding the scope of

Financial Accounting Standards Board File Reference No. EITF – 12C Page 2

the proposed ASU to address the accounting for this clawback provision. We have observed divergent application of the existing accounting guidance with acquirers accounting for this clawback provision as either 1) a reduction of the indemnification asset, 2) a separate liability in a symmetrical manner with the indemnification asset, or 3) contingent consideration.

**Question 4:** Do you agree that the proposed amendments should be applied prospectively to any new indemnification assets acquired and to changes in expected cash flows of existing indemnification assets occurring on or after the date of adoption? If not, please explain why.

We have concerns with requiring prospective application to changes in expected cash flows of existing indemnification assets as this could result in mixed amortization periods for a single indemnification asset which may be confusing to the users of financial statements.

**Question 5**: Do you agree that an entity should be permitted to early adopt the proposed amendments? If not, please explain why.

We are in agreement with permitting early adoption.

**Question 8:** The proposed amendments would apply to public and nonpublic entities. Should any of the proposed amendments be different for nonpublic entities? If so, please identify those proposed amendments and describe how and why you think they should be different

We do not believe the proposed amendments should differ in application between public and nonpublic entities.

## Other Recommendations:

As currently proposed, paragraph 805-20-35-4B states in part, "In certain circumstances, the effect of the change in expected cash flows of the indemnification agreement should be amortized... For example, for indemnified assets accounted for under paragraph 310-30-35-10, if the expected cash flows on the indemnified assets increase (and there is no previously recorded impairment allowance), an entity would account for the associated decrease in the indemnification asset by amortizing the change over the lesser of the contractual term of the indemnification agreement and the remaining life of the indemnified assets." We believe it would be beneficial to outline other potential circumstances, if any, under which it would be appropriate to account for a decrease in the indemnification asset by amortizing the change (as opposed to immediately recognizing it in earnings) to prevent inappropriate expense deferral. If such circumstances would generally be limited to the example provided (indemnified assets accounted for under paragraph 310-30-35-10), it would be beneficial to explicitly state that.

We appreciate this opportunity to provide feedback on the proposed guidance and would be pleased to respond to any questions the FASB or its staff may have concerning our comments. Please direct any questions to Rick Day (563-888-4017) or Brian H Marshall (203-312-9329).

Sincerely,

McGladrey LLP

McGladrey LCP