

**FASB STAFF POSITION**

**No. FAS 126-1**

**Title:** Applicability of Certain Disclosure and Interim Reporting Requirements for Obligors for Conduit Debt Securities

**Date Posted:** October 25, 2006

**Introduction**

1. This FASB Staff Position (FSP) clarifies the definition of a *public entity* in certain accounting standards to include entities that are conduit bond obligors for conduit debt securities that are traded in a public market. This FSP amends APB Opinion No. 28, *Interim Financial Reporting*; FASB Statements No. 69, *Disclosures about Oil and Gas Producing Activities*, No. 109, *Accounting for Income Taxes*, No. 126, *Exemption from Certain Required Disclosures about Financial Instruments for Certain Nonpublic Entities*, No. 131, *Disclosures about Segments of an Enterprise and Related Information*, No. 132 (revised 2003), *Employers' Disclosures about Pensions and Other Postretirement Benefits*, and No. 141, *Business Combinations*; and AICPA Audit and Accounting Guides, *Health Care Organizations*, and *Not-for-Profit Organizations*.

**Background**

2. A state or unit of local government or an agency or instrumentality of a state or local government (governmental entity) can raise funds in the capital markets by issuing municipal bonds. The Internal Revenue Code also permits a governmental entity to issue a conduit debt security (commonly referred to as municipal bonds or industrial revenue bonds). A conduit debt security is an offering by a governmental entity that is not for its own use but for the use of a private party (conduit bond obligor). The types of private entities that can be involved in a conduit debt security are limited by the federal tax code to certain not-for-profit entities (for example, hospitals, museums, and libraries) and to for-profit entities for which the security is issued in the form of an industrial revenue or development bond for a specific purpose allowable by the Internal Revenue Code. In some instances, these conduit debt securities are traded in a public market (a domestic or

foreign stock exchange or on an over-the-counter market, including local or regional markets).

3. Under conduit debt securities, the governmental entity that issues them often does not have any subsequent liability or continuing involvement. Therefore, entities that benefit from the conduit debt securities frequently are considered the obligors to the conduit debt securities. Obligor may be added or removed subsequent to the initial offering. In the initial security offering, the governmental entity is listed as the issuer, and the entity that receives the proceeds from the sale of the conduit debt security is listed as the obligor. The governmental entity does not include any of its own financial operating results in the initial offering or future filings. The conduit bond obligor is required to make or fund all interest and principal payments as they become due, and any future financial reporting requirements also are the responsibility of that conduit bond obligor.

4. Questions have arisen as to whether a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), should be considered a public entity for the purposes of applying certain existing authoritative accounting literature.

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5. An entity that is an obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets) meets the definition of a public entity or enterprise. The definition of a conduit bond obligor includes all individual conduit bond obligors that participate in a pooled conduit debt security. This FSP amends only the accounting literature in the appendix to this FSP to include conduit bond obligors in the definition of a public entity or enterprise. That is, other references in authoritative accounting literature that include a definition of a public entity or enterprise that have not been specifically amended to include a reference to conduit bond obligors are unaffected by this FSP.

**Effective Date and Transition**

6. The guidance in this FSP shall be applied prospectively in fiscal periods beginning after December 15, 2006. An entity may elect to retrospectively apply the guidance to all prior periods. If an entity issues interim financial statements, this FSP shall be applied to the first interim period after the date of adoption.

**Appendix**

**AMENDMENTS TO EXISTING PRONOUNCEMENTS**

A1. This FSP amends the following literature to clarify the definition of a public entity. Literature that defines a public entity primarily in terms of its equity instruments being traded in a public exchange is not affected by this FSP.

A2. APB Opinion No. 28, *Interim Financial Reporting*, is amended as follows: [Added text is underlined, and deleted text is ~~struck out~~.]

- a. Footnote 1 to paragraph 6:

A publicly traded company for purposes of this Opinion includes any company whose securities trade in a public market on either (1) a stock exchange (domestic or foreign) or (2) in the over-the-counter market (including securities quoted only locally or regionally), or any company that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets). Additionally, when a company makes a filing with a regulatory agency in preparation for sale of its securities in a public market it is considered a publicly traded company for this purpose.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A3. FASB Statement No. 69, *Disclosures about Oil and Gas Producing Activities*, is amended as follows:

- a. Footnote 2 to paragraph 1:

For purposes of this Statement, a publicly traded enterprise is a business enterprise (a) whose securities are traded in a public market on a domestic stock exchange or in the domestic over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or

foreign stock exchange or an over-the-counter market, including local or regional markets), or (c) ~~or (b)~~ whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities in a domestic market.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A4. FASB Statement No. 109, *Accounting for Income Taxes*, is amended as follows:

- a. Paragraph 289 (glossary):

**Nonpublic enterprise**

An enterprise other than one (a) whose debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or (c) ~~or (b)~~ whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

**Public enterprise**

An enterprise (a) whose debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or (c) ~~or (b)~~ whose financial

statements are filed with a regulatory agency in preparation for the sale of any class of securities.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A5. FASB Statement No. 126, *Exemption from Certain Required Disclosures about Financial Instruments for Certain Nonpublic Entities*, is amended as follows:

a. Paragraph 3:

For purposes of this Statement, a nonpublic entity is any entity other than one (a) whose debt or equity securities trade in a public market either on a stock exchange (domestic or foreign) or in the over-the-counter market, including securities quoted only locally or regionally, (b) that is a conduit bond obligor for conduit debt securities<sup>a</sup> that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), (c) ~~(b)~~ that makes a filing with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market, or (d) ~~or (e)~~ that is controlled by an entity covered by (a), (b), or (c) ~~or (b)~~.

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<sup>a</sup>Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A6. FASB Statement No. 131, *Disclosures about Segments of an Enterprise and Related Information*, is amended as follows:

a. Paragraph 9:

This Statement applies to public business enterprises. Public business enterprises are those business enterprises that have issued debt or equity securities or are conduit bond obligors for conduit debt securities<sup>1a</sup> that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), that are required to file financial statements with the Securities and Exchange Commission, or that provide financial statements for the purpose of issuing any class of securities in a public market. This Statement does not apply to parent enterprises, subsidiaries, joint ventures, or investees accounted for by the equity method if those enterprises' "separate company" statements also are consolidated or combined in a complete set of financial statements and both the separate company statements and the consolidated or combined statements are included in the same financial report. However, this Statement does apply to those enterprises if they are public enterprises and their financial statements are issued separately. This Statement also does not apply to not-for-profit organizations (regardless of whether the entity meets the definition of a public entity as defined above) or to nonpublic enterprises. Entities other than public business enterprises are encouraged to provide the disclosures described in this Statement.

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<sup>1a</sup>Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A7. FASB Statement No. 132 (revised 2003), *Employers' Disclosures about Pensions and Other Postretirement Benefits*, is amended as follows:

a) Paragraph E1 (glossary)

**Nonpublic entity**

Any entity other than one (a) whose debt or equity securities trade in a public market either on a stock exchange (domestic or foreign) or in the

over-the-counter market, including securities quoted only locally or regionally, (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), (c) ~~(b)~~ that makes a filing with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market, ~~or (d) or (e)~~ that is controlled by an entity covered by (a), (b), or (c) ~~or (b)~~.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued. Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A8. FASB Statement No. 141, *Business Combinations*, is amended as follows:

- a. Paragraph F1 (glossary):

**Public business enterprise**

An enterprise that has issued debt or equity securities or is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), that is required to file financial statements with the Securities and Exchange Commission, or that provides financial statements for the purpose of issuing any class of securities in a public market (FASB Statement No. 131, *Disclosures about Segments of an Enterprise and Related Information*, paragraph 9).

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party (the conduit bond obligor) that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental entity that issues them, the governmental entity often has no obligation for such debt beyond the resources provided by a lease or loan agreement with the third party on whose behalf the securities are issued (FASB Statement No. 131, *Disclosure about Segments of an Enterprise and Related Information*, paragraph 9). Further, the conduit bond obligor is responsible for any future financial reporting requirements.

A9. The AICPA Accounting and Auditing Guide, *Not-for-Profit Organizations*, is amended as follows:

a. Paragraph 1.24:

**[For ease of use, only the portion of this example affected by this FSP has been reproduced.]**

APB Opinion No. 28, <i>Interim Financial Reporting</i> , as amended by FASB Statement Nos. 3, 95, 109, 123(R), 128, 130, 131, 132(R), 135, 144, 145 and 148, and including FASB Interpretation No. 18 <sup>CHG, FMV, FSP</sup>	None	None
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<sup>FSP</sup>APB 28 is applicable to entities that meet the definition of a public entity in footnote 1 in paragraph 6 of APB 28.

A10. The AICPA Accounting and Auditing Guide, *Health Care Organizations*, is amended as follows:

a. Paragraph 1.55:

**[For ease of use, only the portion of this example affected by this FSP has been reproduced.]**

APB Opinion No. 28, <i>Interim Financial Reporting</i> , as amended by FASB Statements No. 3, No. 95, No. 109, No. 123(R), No. 128, No. 130, No. 131, No. 132(R), No. 135, No. 144, No. 145, and No. 148 and including FASB Interpretation No. 18 <sup>FSP</sup>	None	None
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<sup>FSP</sup>APB 28 is applicable to entities that meet the definition of a public entity in footnote 1 in paragraph 6 of APB 28.