



2901 Telestar Court • Falls Church, VA 20042

June 12, 2006

Via E-mail to jerichter@fasb.org

Mr. Lawrence W. Smith, Chairman
Emerging Issues Tax Force
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Re: Comments on EITF Issue No. 06-4 and Issue Summary No. 1
Accounting for Deferred Compensation and Post Retirement Benefit
Aspects of Endorsement Split-Dollar Life Insurance Arrangements

Dear Mr. Smith:

The Association for Advanced Life Underwriting (AALU) on March 15, 2006 submitted to the EITF written comments with respect to EITF Issue No. 06-4, "Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements". (For ease of reference a copy of our March 15, 2006 letter is attached as Exhibit A.) Our comments were prompted by Issue Summary No. 1, dated February 20, 2006, but posted on the EITF's website on March 3, 2006.¹

The supplemental comments set forth in this letter are submitted for consideration by the EITF at its meeting scheduled for June 15, 2006. EITF Issue No. 06-4 has been included on the agenda for that meeting.²

Position Summarized

As we stated in the Summary section on page 4 of our March 15 letter, "An employer that purchases an endorsement split-dollar life insurance policy to provide a postretirement benefit, thereby undertaking no obligation outside the policy to provide the benefit, should not accrue any cost or liability under FAS 106 or APB 12. The employer should account for the acquisition and maintenance of the policy solely under FTB 85-4".

¹ FASB Emerging Issues Task Force, "Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements" (February 20, 2006).

² On June 7, 2006, the EITF posted to its website Issue Summary No. 1, Supplement No. 1 (May 31, 2006). These comments do not address Supplement No. 1.

Purpose for Commenting

When, through your website, we listened on March 16, 2006 to the EITF's discussion of Issue No. 06-4, it became evident that there existed unreconciled differences among members respecting the precise nature and terms of an endorsement split dollar life insurance arrangement. Therefore, our primary purpose in this supplemental submission is to set forth, for the benefit of all relevant parties, the specifics of a typical such arrangement.

Illustration

Pursuant to that arrangement, an illustration of which is attached hereto as Exhibit B, the following occurs:³

- The employer acquires a cash value life insurance policy on the life of an employee.
- The employer thereupon enjoys full ownership of the policy.
- The employee may designate the policy's beneficiary who, during the term of the arrangement, will generally be entitled to receive an amount equal to no greater than the difference between the face amount of the policy and its cash surrender value on the date of death.
- The employer retains the right to the cash surrender value.
- The policy need not remain subject to the arrangement subsequent to the employee's retirement or other termination of employment.⁴
- The employee's rights and interests and those of the employee's beneficiary, all as related to the employer, will be completely satisfied upon the employer's compliance, during the term of the split-dollar arrangement, with the arrangement's provisions. In effect, the employer will have no further obligation to the employee.
- If (at the time of the employee's death, before or after retirement, while the arrangement remains in effect) the issuing life insurance company fails to pay that portion of the death benefit which is required to be remitted to the employee, the employer will have no obligation to make its own payment in substitution for the failed payment by the issuing company.

³ The terms of this representative arrangement resemble the sample fact pattern of an endorsement split-dollar life insurance arrangement in Exhibit 06-4A of Issue Summary No. 1.

⁴ Issue No. 06-4 is limited to circumstances in which an endorsement split dollar life insurance policy provides a benefit to an employee that extends to postretirement periods. See Issue Summary No. 1, ¶13.

Mr. Lawrence W. Smith
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- At any time before the employee dies, either the employer or the employee may terminate the arrangement without penalty.
- At termination, the employer will have no further obligation under the arrangement (e.g., it will have no obligation to pay any policy premiums), and the employee will be entitled to no further benefit.

Analysis

A typical endorsement split-dollar life insurance arrangement, structured as above, does not impose a post-retirement benefit obligation on the employer. However, such an arrangement is simply a contractual agreement between an employer and employee and may not always be typical. If, in addition, the agreement contains other provisions which could be called non-typical (e.g., limitations on the right to terminate the arrangement, residual guarantees by the employer), then the "no obligation" conclusion may be inapplicable.

The conclusion that no liability arises also may not apply where the employer has structured for the employee a separate post-retirement benefit, against which the death benefit under the endorsement split-dollar arrangement is offset. In that situation, the employer could conceivably be liable for payment of the benefit, if the issuing company fails to pay a sufficient amount under the policy, and may properly be required to recognize a liability. Such recognition, however, would occur with respect to the postretirement benefit, not the endorsement split-dollar arrangement.

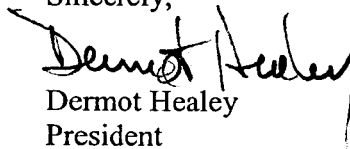
Conclusion and Offer to Assist

To summarize briefly, in the circumstance of a typical endorsement split-dollar life insurance arrangement, the employer should not be required to accrue any cost or liability.

* * * * *

We would be pleased to discuss these comments with any appropriate interested member of the EITF or the staff. For that purpose, we encourage you to contact either AALU Counsel, Gerald H. Sherman, 1700 K Street, N.W., Washington, D.C. 20006, telephone: 202-452-7940, or AALU Vice President of Policy/ Public Affairs, Tom Korb, at the above telephone number.

Sincerely,



Dermot Healey
President

Association for Advanced Life Underwriting

Attachments: Exhibit A: Initial Comment Letter of March 15, 2006
Exhibit B: Representative Split-Dollar Endorsement Agreement



2901 Telestar Court • Falls Church, VA 20042

March 15, 2006

Via E-mail to jerichter@FASB.org

Mr. Lawrence W. Smith, Chairman
Emerging Issues Task Force
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Re: Comments on EITF Issue No. 06-04 and Issue Summary No. 1
Accounting for Deferred Compensation and Postretirement
Benefit Aspects of Endorsement Split-Dollar Life Insurance
Arrangements

Dear Mr. Smith:

The Association for Advanced Life Underwriting (“AALU”) appreciates this opportunity to comment on EITF Issue No. 06-4, “Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements.” AALU is a national association of nearly 2,000 advanced life insurance planners. Its members sell and service substantial volumes of life insurance for business continuation, estate and retirement planning, wealth accumulation and transfer, executive compensation, charitable planning and employee benefits for individuals, families, estates, small businesses and corporations. Our comments are prompted by Issue Summary No. 1 dated February 20, 2006, but posted on the EITF’s website on March 3, 2006 (the “Issue Summary”).

A. Scope of Comments

We understand that the scope of Issue 06-4 is limited to “endorsement split-dollar life insurance policies . . . that provide a benefit to an employee that extends to postretirement periods.” Issue Summary, ¶13. Accordingly, our brief comments in this letter¹ solely concern such types of policies.

¹ Our comments are necessarily brief in light of the limited time between the release of the Issue Summary and the March 16, 2006 date set for its discussion at a meeting of the EITF.

B. Position Summarized

An employer who purchases an endorsement split-dollar life insurance policy should not account for any postretirement benefits provided by the policy under FAS 106 or APB 12, provided that neither the policy nor any other arrangement imposes on the employer any obligation to pay the benefits that the insurer has contracted to provide.² The employer should account for the acquisition and maintenance of such a policy solely under FTB 85-4. The same principle should apply whether an endorsement split-dollar policy requires a single premium or series of premiums and whether it is participating or nonparticipating.

C. Rationale for Position

1. The insurer, not the employer, has the legal obligation to provide the specified benefits; the employer has no such obligation to the employee or the employee's beneficiaries.

Typically, upon purchasing a split-dollar policy that provides a postretirement benefit, an employer shifts to the insurer the entire obligation to pay the benefit. The insurance company unconditionally undertakes a legal obligation to provide a specified benefit to a specific individual in return for a fixed consideration or premium. If the policy lapses or is surrendered by the employer, the split-dollar arrangement terminates and the employer has no obligation to the employee or the employee's beneficiary to pay those benefits. In other words, as the proponents of View B correctly observe, the employer has no secondary or even contingent obligation to pay the benefits the policy would have paid. Issue Summary ¶19. See, e.g., Exhibit 06-4A, clause c. under "Split-Dollar Agreement."

When an employer has shifted to the insurer the responsibility to pay postretirement benefits, the employer clearly has no "liability" to provide such benefits within the meaning of CON 6. "Central" to the determination of whether FAS 106 applies is whether a postretirement benefit plan creates an obligation meeting that definition of a liability. See FAS 106, ¶151. If the employer has no such liability, then it would correctly not accrue postretirement benefit costs under FAS 106. By logical extension, the same principle should apply under APB 12.

2. An employer's purchase of a split-dollar policy to provide a postretirement benefit effectively "settles" the obligation.

FAS 106 defines a "settlement" as a transaction that (a) is an irrevocable action, (b) relieves the employer (or the plan) of primary responsibility for a postretirement benefit obligation, and (c) eliminates significant risks related to the obligation and the assets used to effect the settlement. FAS 106, ¶90. An employer's purchase of a split-dollar policy to provide postretirement benefits satisfies all three conditions. Once an employer irrevocably purchases the policy, it has effectively relieved itself of any responsibility to pay postretirement benefits covered by the policy and has eliminated any risk of any future obligation to pay such benefits.

² The policies encompassed by our position include, but are not limited to, the policy described in Exhibit 06-4A of the Issue Summary.

In the Issue Summary, opponents of View B are said to "argue that a settlement has not occurred because no benefits have accumulated at the date the policy is entered into." Issue Summary, ¶27. They base their argument solely on a hypothetical example involving pensions. However, the FASB concluded that "the purchase of a nonparticipating insurance contract is a settlement of a postretirement benefit obligation rather than an investment." FAS 106, ¶366. In so concluding, the Board recognized that an insurance contract can effectively transfer the primary obligation for payment of benefits from the employer (or the plan) to the insurance company. *Id.*; see also ¶67. The Board further recognized that both nonparticipating and participating contracts can be used to effect a settlement. See FAS 106, ¶¶366 and 372.

Opponents of View B in the Issue Summary are said also to challenge the finding of a "settlement" on the ground that an employer's purchase of a split-dollar policy is not always irrevocable. They describe split-dollar arrangements that an employer is not required to maintain in force and can cancel at any time. Similarly, they contend that "comparable coverage" clauses in policies cause a settlement not to satisfy the requirement of irrevocability. Issue Summary, ¶25. Even under these circumstances, however, once an employer has purchased the policy, the employer permanently has eliminated any responsibility to provide the benefits the policy provides. If the policy is canceled or replaced, the employer does not re-assume any obligation to pay the benefits the policy would have paid. Thus, the policy features described in paragraph 25 cannot cause a settlement to fail to be irrevocable.³

3. The references under View A in the Issue Summary do not support requiring an employer to record liabilities under FAS 106 or APB 12.

Urging that employers should recognize liabilities for postretirement benefits provided by split-dollar life insurance, the proponents of View A cite various provisions of FAS 106 and other accounting literature. None of the cited provisions support View A.

The proponents observe that "postretirement benefits" as defined in the Glossary of FAS 106 (Appendix E) may be defined in terms of monetary amounts that become payable on the occurrence of a specified event, such as life insurance benefits. See Issue Summary, ¶14. We do not dispute that postretirement benefits may take the form of life insurance benefits. It does not follow, however, that postretirement benefits provided by insurance proceeds required to be paid and in fact paid by the issuing company directly to the employee represent a liability of the employer purchasing the insurance.⁴

Citing paragraph 150 of FAS 106, the proponents of View A are said to argue that the accounting should not differ depending on whether an employer self-insures a postretirement death benefit or purchases an insurance policy under which the insurance company is obligated to pay the benefit. Issue Summary, ¶15. However, self-insuring versus purchasing insurance

³ In contrast, if the employer were to assume the obligation, then the View A position would be more supportable. The resolution of this issue depends on the specifics of the actual benefit promise.

⁴ A liability could be said to exist if the policy was an annual premium policy that the employer committed to keep in force. However, we doubt that many (if any) employers would make such a promise.

reaches the core of who undertakes a liability (within the meaning of CON 6) to provide the benefit. As previously explained, the existence of a liability is "central" to whether an employer must accrue benefit costs under FAS 106 and, by logical extension, APB 12. Also, as previously explained, when an employer purchases life insurance to provide a postretirement benefit, the employer typically does not undertake a liability as CON 6 defines the term but, rather, places the liability with the insurer.

The proponents also cite FTB 85-4 and the AICPA Issues Paper for the proposition that life insurance is often purchased to "fund" postemployment benefits. Issue Summary, ¶16. A purchase of life insurance which will pay to an employer benefits that, in turn, will enable the employer to discharge its continuing liability to the employee (i.e., "to fund" the obligation) is not the same as substituting the insurance company's obligation for the employer's. An employer by entering into such an arrangement does not incur a liability. It, therefore, simply does not follow that "if the funding objective of the purchase of split-dollar life insurance is to provide a postemployment death benefit, then a liability must be recognized for the benefit..." See Issue Summary, ¶17.

4. Summary.

An employer that purchases an endorsement split-dollar life insurance policy to provide a postretirement benefit, thereby undertaking no obligation outside the policy to provide the benefit, should not accrue any cost or liability under FAS 106 or APB 12. The employer should account for the acquisition and maintenance of the policy solely under FTB 85-4.

D. Transition Alternatives

The Issue Summary suggests three alternatives under which employers would transition to any consensus reached on EITF Issue No. 06-4. A transition alternative would be needed to the extent that a consensus on Issue 06-4 concludes that any postretirement benefits funded by split-dollar life insurance must be accounted for under FAS 106. For the reasons previously set forth, we do not believe that such accounting should be required. If, however, the EITF concludes that some varieties of policies give rise to employer liabilities under FAS 106 or APB 12, then we urge the consensus to adopt transition Alternative C, unless the employer instead elects Alternative A or B.⁵

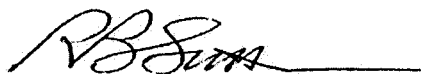
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⁵ We note that FAS 106 provided a transitional "amortization" alternative analogous to Alternative C.

Mr. Lawrence W. Smith
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We would be pleased to discuss these comments with any appropriate interested member of the EITF or the staff. For that purpose, we encourage you to contact either AALU Counsel, Gerald H. Sherman, 1700 K Street, N.W., Washington, D.C. 20006, telephone: 202-452-7940, or AALU Vice President of Policy/Public Affairs, Tom Korb, at the above telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "RBSutton", with a long horizontal line extending to the right.

Roger B. Sutton, JD, CPA,
President
Association for Advanced Life Underwriting

Split-Dollar Endorsement Agreement

THIS AGREEMENT, made and entered into this ____ day of _____, _____, by and between the _____ Inc., (hereinafter referred to as the "Corporation"), a Corporation organized and existing under the laws of the State of _____, and _____ (hereinafter referred to as the "Employee").

WHEREAS, the Employee has performed his duties in an efficient and capable manner; and
WHEREAS, the Corporation is desirous of retaining the services of the Employee; and
WHEREAS, the Corporation is desirous of assisting the Employee in paying for life insurance on his own life; and
WHEREAS, the Corporation has determined that this assistance can best be provided under a "split-dollar" arrangement; and

WHEREAS, the Corporation and the Employee have applied for Insurance Policy No. _____ (the "Policy") issued by the _____ Life Insurance Company ("_____") on the Employee's life; and

WHEREAS, it is now understood and agreed that this split-dollar agreement is to be effective as of the date on which the Policy was issued by "_____".

NOW, THEREFORE, for value received and in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I "Definitions"

For purposes of this Agreement, the following terms will have the meanings set forth below:

1. "Cash Surrender Value of the Policy" will mean the Cash Value of the Policy; plus any dividends and/or earnings added hereto; and less any Policy Loan Balance.
2. "Cash Value of the Policy" will mean the cash value as calculated according to the provisions of the Policy.
3. "Corporation's Interest in the Policy" will be defined in Articles IV and V.
4. "Current Loan Value of the Policy" will mean the Loan Value of the Policy reduced by any outstanding Policy Loan Balance.
5. "Loan Value of the Policy" will mean the amount which with loan interest and Monthly Deductions for the Cost of Insurance, plus any applicable Surrender Charge, will equal the Cash Value of the Policy on the next loan interest due date.
6. "Net Amount at Risk" will mean the total insurance proceeds less the cash surrender of the policy as of the date of death.
7. "Policy Loan Balance" at any time will mean policy loans outstanding plus interest accrued to date.

ARTICLE II "Allocation of Gross Premium"

The Corporation will pay all premiums on the Policy when due, according to the Schedule of Premiums in the Policy.

ARTICLE III
"Payment of Premiums"

Any premium or portion thereof which is payable by the Employee under any Article of the Agreement may at the election of the Employee be deducted from the cash compensation otherwise payable to him and the Corporation agrees to transmit that premium or portion, along with any premium or portion thereof payable by it, to the Insurance Company on or before the premium due date.

ARTICLE IV
"Rights in the Policy"

The Employee will have the sole right to designate the beneficiary for a specified amount of the death proceeds of the Policy. The Corporation will have and may exercise, except as limited hereinafter, all ownership rights in the Policy. The Corporation will not without the written consent of the Employee assign its rights in the Policy, other than for the purpose of obtaining a loan against the Policy, to anyone other than the Employee. The Corporation will not take any action in dealing with the Insurance Company that would impair any right or interest of the Employee in the Policy. The Corporation will have the right to borrow from the Insurance Company, and to secure that loan by the Policy, an amount which together with the unpaid interest accrued thereon, will at no time exceed the lesser of (a) the Corporation's Interest in the Policy and (b) the Loan Value of the Policy.

During the Employee's life time "The Corporation's Interest In The Policy" will mean, at any time at which the value of such interest is to be determined under this Agreement, the Cash Value of the Policy at such time, reduced by any then outstanding Policy Loan Balance with respect to any loans made or charged automatically against the Policy by the Corporation.

ARTICLE V
"Rights to the Proceeds at Death"

Upon the death of the Employee while this Agreement is in force, the Employee's beneficiary as named in the policy will be entitled to receive from the Policy proceeds an amount equal to the lesser of: (a) \$X00,000.00, or (b) the Net Amount at Risk. The remainder of the Policy Proceeds (if any) will be paid to the Corporation. Within 60 days after the death of the Employee, the Corporation will provide to "_____" a written statement indicating the amount of the Policy proceeds the Employee's beneficiary is entitled to receive.

ARTICLE VI
"Termination of Agreement"

This Agreement may be terminated at any time while the Employee is living by written notice thereof by either the Corporation or the Employee to the other.

ARTICLE VII
"Plan Management"

For purposes of the Employee Retirement Income Security Act of 1974, the Corporation will be the "Named Fiduciary" and Plan Administrator of the split-dollar life insurance plan for which this Agreement is hereby designated the written plan instrument. The Corporation's board of directors may authorize a person or group of persons to fulfill the responsibilities of the Corporation as Plan Administrator. The Named Fiduciary or the Plan Administrator may employ others to render advice with regard to its responsibilities under this Plan. The Named Fiduciary may also allocate fiduciary responsibilities to others and may exercise

any other powers necessary for the discharge of its duties to the extent not in conflict with the Employee Retirement Income Security Act of 1974.

ARTICLE VIII "Claims Procedure"

(1) Filing claims. Any insured, beneficiary or other individual (hereinafter "Claimant") entitled to benefits under the Plan or under the Policy will file a Claim request with the Plan Administrator with respect to benefits under the Plan and with "_____", with respect to benefits under the Policy. The Plan Administrator will, upon written request of a Claimant, make available copies of any claim forms or instructions provided by "_____" or advise the Claimant where such forms or instructions may be obtained.

(2) Notification to Claimant If a claim request is wholly or partially denied, the Plan Administrator will furnish to the Claimant a notice of the decision within 90 days in writing and in a manner calculated to be understood by the Claimant, which notice will contain the following information:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to the pertinent Plan provisions upon which the denial is based;
- (c) A description of any additional material or information necessary for the Claimant to perfect the Claim and an explanation of why such material or information is necessary; and
- (d) An explanation of the Plan's claims review procedure describing the steps to be taken by a Claimant who wishes to submit his claim for review

(3) Review Procedure. A Claimant or his authorized representative may with respect to any denied claim:

- (a) Request a review upon written application filed within 60 days after receipt by the Claimant of notice of the denial of his claim;
- (b) Review pertinent documents; and
- (c) Submit issues and comments in writing

Any request or submission will be in writing and will be directed to the Named Fiduciary (or his designee). The Named Fiduciary (or its designee) will have sole responsibility for the review of any denied claim and will take all steps appropriate in the light of its findings.

(4) Decision on Review. The Named Fiduciary (or its designee) will render a decision upon review of a denied claim within 60 days after receipt of a request for review. If special circumstances warrant additional time, the decision will be rendered as soon as possible, but not later than 120 days after receipt of request for review. Written notice of any such extension will be furnished to the Claimant prior to the commencement of the Extension. The decision on review will be in writing and will include specific reasons for the decision, written in a manner calculated to be understood by the Claimant, as well as specific references to the pertinent provisions of the Plan on which the decision is based. If the decision on review is not furnished to the Claimant within the time limits prescribed above, the claim will be deemed denied on review.

ARTICLE IX "Satisfaction of Claim"

The Employee rights and interests, and rights and interests of any person taking under or through him, will be completely satisfied upon compliance by the Corporation with the provisions of the Agreement.

ARTICLE X
"Amendment and Assignment"

This Agreement may be altered, amended or modified, including the addition of any extra policy provisions, by a written instrument signed by the Corporation and the Employee. Either party may, subject to the limitations of Article IV, assign its interest and obligations under this Agreement, provided, however, that any assignment will be subject to the terms of this Agreement.

ARTICLE XI
"Possession of Policy"

The Corporation will keep possession of the Policy. The Corporation agrees from time to time to make the policy available to the Employee or to "_____" for the purpose of endorsing or filing any change of beneficiary on the Policy but the Policy will promptly be returned to the Corporation.

ARTICLE XII
"Governing Law"

This Agreement sets forth the entire Agreement of the parties hereto, and any and all prior agreements, to the extent inconsistent herewith, are hereby superseded. This Agreement will be governed by the laws of the State of _____.

ARTICLE XIII
"Interpretation"

Where appropriate in this Agreement, words used in the singular will include the plural and words used in the masculine will include the feminine.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals, the Corporation by its duly authorized officer, on the day and year first above written.

Employee

Officer