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EITF-12D
Comment Letter No. 5
233 N. Michigan Ave., Suite 2500
Chicago, IL 60601

September 20, 2012

Via email to director@fasb.org

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

RE: Proposed Accounting Standards Update, *Obligations Resulting from Joint and Several Liability Arrangements* (File Reference No. EITF-12D)

Dear Ms. Cospers:

We are pleased to provide comments on the exposure draft related to obligations resulting from joint and several liability arrangements. We support the Board's objective to reduce the diversity in practice for such arrangements.

We agree with the overall scope and accounting model in the exposure draft (ED), but believe the Task Force should more clearly address the interaction of Topic 450 with the ED at the point when the amount of the obligation first becomes fixed. In this context, we note the ED indicates in BC2:

- The Task Force decided that this proposed Update would apply to obligations resulting from joint and several liabilities arrangements for which the total amount under the arrangement is fixed at the reporting date.
- Liabilities subject to a contingency would be excluded from the scope and would continue to be accounted for under the guidance in Topic 450.

Assume a reporting entity has estimated and recorded a contingent liability of \$80 under Topic 450, for which the entity is jointly and severally liable with another party. In the current period, the contingency is resolved and the entity's liability measured under the ED is \$100. Since \$100 is the only fixed amount, it is not apparent whether the \$20 *difference* between the fixed amount and the prior contingent amount would be subject to Topic 450 or the ED. Topic 450 would require an adjustment that affects earnings, while the ED does not prescribe the offsetting entry. As such, we recommend that the final amendments specify which accounting model governs the transition from one to the other.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Lee Gaul, National Director of Accounting at (312) 616-4667 or Adam Brown, Partner in the National Accounting Department at (214) 665-0673.

Very truly yours,

BDO USA, LLP

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Appendix - Questions for Respondents¹

Question 1: Do you agree with the types of obligations resulting from joint and several liability arrangements that are included in the scope of this proposed Update (that is, the total amount under the arrangement is fixed at the reporting date and not otherwise covered by existing U.S. GAAP)? Are there other forms of joint and several liability arrangements that should be included in the scope of this proposed Update? If certain arrangements should be excluded or included, please explain why.

We agree with the scope of the ED. We are not aware of other forms of joint and several liability arrangements that should be included.

It appears the final amendments to paragraph 405-40-15-1 should specifically exclude guarantee obligations under Topic 460, as indicated in 405-40-15-2.

In addition, we recommend amending the scope of Topic 450 to exclude joint and several obligations for which the total amount is fixed, since that guidance will now reside in ASC 405-40. We note that if a practitioner read Topic 450 in isolation, there would be no indication that the accounting for a contingency may change based on its life cycle. As further explained in our cover letter, we recommend specifying which guidance reporting entities should apply when the accounting for a liability transitions from Topic 450 to the ED.

Question 2: Do you agree that the scope of this proposed Update should include all entities that have joint and several liability arrangements within the scope of the proposed Update, including entities that are under common control, related parties, and unrelated parties? If not, please explain why.

We agree.

Question 3: Are you aware of joint and several liability arrangements among unrelated parties? If yes, please describe such arrangements and describe why those arrangements should be included or excluded from the scope of this proposed Update.

Yes, we are aware of joint and several liability arrangements between unrelated parties, particularly in the healthcare industry where it is not uncommon for two or more unrelated hospitals to enter into minimum revenue guarantee contracts with physicians, similar to those arrangements originally contemplated in FSP FIN 45-3.² For example, to entice a physician with unique or specialized skills to move into a geographic area, Hospital A and Hospital B provide a guarantee that the doctor will earn at least \$2 million of revenue over a specified period. Hospital A and Hospital B would be jointly and severally liable for any shortfall at the end of the contract. Moreover, we are aware that certain states permit joint and several liability arrangements between hospitals and physician groups.

¹ Please note question 10 has been omitted since it is directed specifically to preparers.

² Application of FASB Interpretation No. 45 to Minimum Revenue Guarantees Granted to a Business or Its Owners

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We are also aware of some arrangements in the construction industry in which two or more companies will sign a consortium agreement to complete a large-scale project together. Though negotiated on a contract-by-contract basis, these consortium agreements may include joint and several liability provisions between the companies for defects in the work performed under the project.

We do not believe the substance of these unrelated party arrangements merits a different accounting treatment than that prescribed in the proposed Update. Consequently, we believe such arrangements should be included in its scope.

Question 4: Under this proposed Update, if the primary role of a reporting entity in the joint and several liability arrangement is that of a guarantor, then it should account for the obligation under Topic 460. This proposed Update includes some guidance on when the primary role is that of a guarantor. Is that guidance sufficient to distinguish between joint and several liability arrangements that should be accounted for under Topic 460 and those that should be accounted for under Subtopic 450-20? If not, please explain what additional guidance the Task Force should consider including to assist preparers in distinguishing between the two.

In addition to the Update's cross-reference to Topic 460, we believe the Task Force should consider providing indicators in the final amendments to assist preparers with making this determination. For example, we believe the following indicators might be relevant in identifying whether the primary role of the reporting entity is that of a guarantor in loan scenarios:

- Which party received the loan proceeds,
- Which party initiated the borrowing process, and
- Which party was requested by the lender to act as a co-borrower or a guarantor.

Question 5: Do you agree that obligations resulting from joint and several liability arrangements that are included in the scope of this proposed Update should be measured as a loss contingency in accordance with Subtopic 450-20? If not, please explain why.

We agree.

Question 6: Do you agree with the disclosure requirements for obligations resulting from joint and several liability arrangements that would be included in the scope of this proposed Update? If not, please explain why.

We agree. As many joint and several liability arrangements are between related parties, the Task Force may consider adding a paragraph in the Relationships Section of Topic 450 (450-40-60-1) to direct preparers to Topic 850, *Related Party Disclosures*.

Question 7: Do you agree that the guidance in this proposed Update should be applied retrospectively to all prior periods presented for obligations resulting from joint and several liability arrangements that exist at the beginning of an entity's fiscal year of adoption? If not, please explain why. Also, do you think the transition guidance should be the same for obligations in which the primary role of the reporting entity is that of a guarantor and that are to be accounted for under Topic 460? If not, please explain why. Do you agree that an entity may elect to use hindsight for the comparative period(s) if it changed its accounting as a result of adopting this proposed Update? If not, please explain why.

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We agree with the retrospective application of the guidance in the proposed Update and that the transition guidance should be the same for guarantor situations. We note that the use of hindsight is practical, but generally inconsistent with other standards where similar relief has not been provided. The FASB and the Task Force may wish to consider which facts and circumstances in Issue 12D warrant the use of hindsight in order to determine when it might also be appropriate in future standards.

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

We do not believe any of the proposed amendments should apply differently depending on whether the entities are public or nonpublic.

Question 9: Do you agree that an entity should be permitted to early adopt the proposed amendments? If not, please explain why.

We agree.