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July 16, 2012

Technical Director
File Reference No. 1820-100
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Via Email to director@fasb.org

RE: **File Reference No. EITF-12C**, Proposed Accounting Standards Update (ASU), *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, a consensus of the FASB Emerging Issues Task Force*

Dear Technical Director:

We are pleased to provide our comments on the FASB's 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 Proposal). While we agree with the main provisions, we have several suggestions for the Task Force's consideration.

We appreciate the objective to portray meaningful financial reporting, consistent with the economic realities of these transactions. We agree that the immediate impairment of an indemnification asset, while at the same time recognizing increases in expected cash flows prospectively on the indemnified assets, results in a counterintuitive result. The most common example is the accounting model in ASC 310-30, "Receivables—Loans and Debt Securities Acquired with Deteriorated Credit Quality," for certain indemnified loans and debt securities which requires different treatment for increases and decreases in expected cash flows. We recognize the FASB, through its international convergence project on accounting for financial instruments, is re-visiting that model and that the recognition for increases in expected cash flows may change which may mitigate the need to retain this specialized indemnification asset accounting. However, we believe it is important to acknowledge that the concept of recognizing an indemnification asset which does not represent the discounted cash flows expected to be collected from the indemnifying party is inconsistent with the conceptual framework, FASB Concepts Statement No. 6, "Elements of Financial Statements" (CON6). While we support this interim step, we suggest that the Task Force reconsider this conclusion after completion of the accounting for financial instruments project.

Our comments are separated into responses to certain of the Proposal's specific questions and other comments where the guidance could be clearer.

Responses to Questions

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 with the Proposal as an interim step as it achieves the objective of aligning the income statement recognition of impairment on the indemnification asset with the increases in expected cash flows from the indemnified assets.

It would be helpful if the Task Force clarified the definition of the “indemnified asset” as it pertains to the unit of account and how removal events from ASC 310-30 pools should be treated with respect to the indemnification asset. In government-assisted transactions, the individual loan relationship acquired is the indemnified asset; however, many acquirers have elected to pool the acquired loans creating a unit of account which differs from the indemnified asset. If the objective of this Proposal is to align the prospective yield improvement on loan pools accounted for under ASC 310-30 with the indemnification asset accounting, then we believe the cash flow period of the pool (because the pool is the unit of account), should be used to amortize the reduction in indemnification cash flows rather than the specific loan relationship that is indemnified. In addition, for individual loan removal events from ASC 310-30 pools where the fair value of the assets received in satisfaction of the loan is in excess of the loan’s carrying amount, (which results in immediate gain recognition), we recommend immediate indemnification asset impairment to align the earnings of the excess cash flow received.

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?

No, we do not believe the scope should be limited to government-assisted transactions. We are aware of other situations where an indemnification is part of the transactions that would appear to warrant similar accounting treatment. Certain credit union deposits are insured by a private insurer, American Share Insurance (ASI), rather than the National Credit Union Administration (NCUA). We are aware that ASI has entered into indemnification arrangements for the acquisition of troubled credit unions. We are also aware of at least one state that has private insurance programs for financial institutions. We believe there is enough similarity between these situations that warrant using the same financial reporting.

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.

Although we believe that most entities will not be significantly impacted by the proposed transition provisions, we are aware that some entities are not currently following the “lesser of the term of the indemnification agreement and the remaining term of the indemnified assets” when amortizing the reduction in cash flows. As proposed, the guidance would be applied prospectively to any new indemnification assets acquired and to changes in expected cash flows of existing indemnification assets

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occurring on or after the date of adoption. The result is those entities could continue to amortize the reduction in cash flows over a longer period than is suggested by this guidance, while at the same time, amortizing future decreases over the shorter of the indemnified asset or indemnification asset. This seems inconsistent with the objective and would result in a lack of comparability. Two possible recommendations for the Task Force's consideration are to either require a cumulative catch-up adjustment as of the effective date or to require unamortized amounts existing at the transition date to be amortized prospectively over the shorter of the remaining contractual term of the indemnification agreement and the remaining life of the indemnified assets.

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

In order to preserve consistency, we do not support early adoption.

Question 7: If the proposed amendments were to be applied either by (a) full retrospective application to all relevant prior periods (when FASB Statement No. 141 (revised 2007), Business Combinations [as codified in Topic 805], was initially adopted) by recording a cumulative-effect adjustment to beginning retained earnings for the earliest period presented or (b) recording the cumulative effect of the change to beginning retained earnings in the period of adoption for all arrangements existing at that date, how much time and effort would be necessary to implement the proposed amendments?

We believe there are practical challenges in applying the retrospective approach which would require using archived files, which might not exist, and re-creating cash flow expectations for prior periods. We believe it is not practical to re-create cash flow expectations for prior points in time which would entail distinguishing between judgments that would have been made based on a set of facts existing at a point time and the knowledge of the actual cash flows that occurred subsequently. As such, we do not support full retrospective application.

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 believe the proposed amendments should apply to both public and nonpublic entities. Without this guidance being applicable to nonpublic entities, the diversity in practice will continue to exist for government-assisted transactions.

Other Comments

Scope Exception for Paragraph 4

We recommend providing a scope exception reference in paragraph 4, in order to address the exception to the contractual amount which is being provided by the Proposal. We suggest the following modification to paragraph 805-20-35-4 to clarify (new text underlined in bold):

At each subsequent reporting date, the acquirer shall measure an indemnification asset that was recognized in accordance with paragraphs 805-20-25-27 through 25-28 at the acquisition date on the same basis as the indemnified liability or asset, subject to any contractual limitations on its amount, **except as noted in paragraph 4B**, and, for an indemnification asset that is not subsequently measured at its fair value, management's assessment of the collectibility of the indemnification asset.

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Clarifications for Paragraph 4B

The proposed guidance creates an indemnification asset which is in excess of the amounts actually owed under the indemnification agreement, until the end of the amortization period. Given that the contractual amount is not relevant to measuring the amortization, we recommend the following suggestion to paragraph 805-20-35-4B (noted in strike-through text):

An indemnification asset recognized at the acquisition date in accordance with paragraphs 805-20-25-27 through 25-28 as a result of a government-assisted acquisition of a financial institution involving an indemnification agreement shall be subsequently measured on the same basis as the indemnified item. In certain circumstances, the effect of the change in expected cash flows of the indemnification agreement should be amortized. Any amortization of changes in value shall be limited to any contractual limitations on the ~~amount and~~ term of the indemnification agreement. When considering the period of amortization, an entity shall consider the lesser of the term of the indemnification agreement and the remaining term of the indemnified assets. 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. Alternatively, if the expected cash flows on the indemnified assets increase such that a previously recorded impairment allowance is reversed, an entity would account for the associated decrease in the indemnification asset immediately in earnings. Any remaining decrease in the indemnification asset would be amortized over the lesser of the contractual term of the indemnification agreement and the remaining life of the indemnified assets.

Reference to CON 6

Paragraph BC6 discusses the Task Force's reasoning for limiting the amortization period to the indemnification asset because allowing a period longer than the agreement would result in an asset that does not meet the definition of CON 6. However, this reference may be confusing because the proposed guidance would result in an indemnification asset in excess of the expected realizable value until the decrease in expected cash flows has been fully amortized, which is in conflict with CON 6. Therefore, we recommend that the Task Force either delete the reference to CON 6 or describe the rationale for departing from CON 6 for measuring the carrying amount of the indemnification asset using an amortization approach while, at the same time, referring to CON 6 for determining the term of the indemnification agreement in amortizing the asset.

Definition of NCUA

The correct definition for NCUA should be changed to National Credit Union Administration rather than Association.

Thank you for the opportunity to provide our comments on the Proposal. Should you have any questions please contact James A. Dolinar or Sydney K. Garmong.

Regards,



Crowe Horwath LLP