

September 14, 2012

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

By e-mail: director@fasb.org

**Re: Proposed Accounting Standards Update – Liabilities (Topic 405):
Obligations Resulting from Joint and Several Liability Arrangements (a consensus of the
FASB Emerging Issues Task Force)**

(File Reference No. EITF-12D)

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Financial Accounting Standards Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with us, please contact J. Roger Donohue, Chair of the Financial Accounting Standards Committee at (917) 887-7809, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,


Gail M. Kinsella
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

**PROPOSED ACCOUNTING STANDARDS UPDATE – LIABILITIES (TOPIC 405):
OBLIGATIONS RESULTING FROM JOINT AND SEVERAL LIABILITY
ARRANGEMENTS (A CONSENSUS OF THE FASB EMERGING ISSUES TASK
FORCE)**

(FILE REFERENCE NO. EITF-12D)

September 14, 2012

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New York State Society of Certified Public Accountants

Comments on

Proposed Accounting Standards Update – Liabilities (Topic 405): Obligations Resulting from Joint and Several Liability Arrangements (a consensus of the FASB Emerging Issues Task Force) (File Reference No. EITF-12D)

Responses to Questions for Respondents

We have reviewed the proposed Accounting Standards Update – Liabilities (Topic 405) Obligations Resulting from Joint and Several Liability Arrangements (the Update) of the Financial Accounting Standards Board (FASB or the Board) and we appreciate the opportunity to provide our responses to the questions for respondents.

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.

Response:

Yes, we agree with the types of obligations resulting from joint and several liability arrangements that are included in the scope of this proposed Update; however, we have two concerns.

1. It is unclear why the amount needs to be “fixed” at the reporting date. For example, in a lawsuit where the liability is probable and the amount is reasonably determinable at the reporting date, the amount would be accrued under ASC 450, *Contingencies*. In a case where several parties can be held jointly and severally responsible for this liability, it seems theoretically inconsistent to not require accrual.
2. It is unclear what the accounting would be in the case of a joint and several guarantee arrangement between parties under common control for which the initial recognition and measurement is excluded from the scope of Topic 460, *Guarantees*.

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.

Response:

Yes, we 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.

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.

Response:

No, we are unaware of joint and several liability arrangements among unrelated parties.

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.

Response:

No, the guidance in distinguishing when the primary role of the reporting entity in the joint and several liability arrangement is that of a guarantor is unclear. We could not draw a firm conclusion that the guidance was adequate to make a determination as to whether the real role of a reporting entity is that of a guarantor using the guidance in ASC Topic 460, *Guarantees*. Also, due to the unique nature of joint and several liability arrangements, the Task Force should consider providing implementation guidance with examples to illustrate situations in which a reporting entity is determined to be a guarantor using the guidance in Topic 460 and whether receipt of explicit consideration for “standing ready” by the reporting entity is necessary for this determination.

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.

Response:

We agree that these obligations should be measured as loss contingencies under ASC 450. However, we believe that the accounting for the recourse provisions that would enable recovery from co-obligors of amounts paid needs to be reconsidered for these types of arrangements. Currently, Generally Accepted Accounting Principles (GAAP) consider recourse provisions as “gain contingencies,” which create a very high hurdle for factoring in any potential recoveries to reduce the amount of liability recorded. Due to the strong legal/contractual claims that an entity would have against its co-obligors, generally, we believe that the ability to consider such recourse provisions in the measurement of such liabilities should be less onerous.

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.

Response:

Yes, we 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. However, it would also be helpful, in the case in which an obligation that has not reached a level that would require recording a liability, to disclose the entry and how it would be presented in the financial statements.

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.

Response:

Yes, we agree that the guidance in this proposed Update should be applied retrospectively; yes, we 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; and yes, we 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.

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.

Response:

The proposed ASU should apply to all entities.

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

Response:

Yes, we agree that an entity should be permitted to early adopt the proposed amendments.