

Certified Public Accountants • Business Consultants

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Emailed: director@FASB.org

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Baden, Gage & Schroeder, LLC appreciates the opportunity to comment on the FASB's proposed Accounting Standards Update on Compensation – Retirement Benefits – Multi-employer Plans (Subtopic 715-80): Disclosure about an Employer's Participation in a Multi-employer Plan.

We are responding on behalf of various construction clients that we represent, which are small to midsized family owned construction companies. Our firm does not support the proposed changes that would require the discosure of liabilities that are considered to have a remote chance of occurrence. We have outlined support for our position as follows:

## Implementation and Burden of Disclosure

Just as many multiemployer plans have a large number of participating employers, many construction companies participate in dozens of plans and sometimes hundreds of plans. These companies will face a very large administrative burden if they are required to request, interpret and report their potential withdrawal liability assessments from all the plans in which they participate. When judged together, the burden placed on the company will not justify the additional information that is made available to the readers of the financial statements. For a contractor that deals with multiple plans to provide a narrative on each and every one that has adopted a funding improvement plan would turn this footnote into a novel.

There is an inability to obtain the proposed information in a timely and accurate manner. Any information that would be able to be provided would be outdated and would be to be relatively useless for reporting purposes since reports represent only one point in time that may or may not have any relevance to the financial statement period. A requirement that looks as simple and innocuous as providing the total assets and accumulated benefit obligations of the plan is nearly impossible to obtain on a timely basis. Actuarial reports computing the accumulated benefit obligations for December 31<sup>st</sup> generally arrive in October of the following year. That is obviously much too late to be included in the reports of our clients and would prevent contractors from filing timely prequalification reports. If contractors are not able to file timely prequalification reports, it will, in effect put the contractor out of business. Furthermore, it is an unnecessary expense to the fund that would surely be passed back to the business owner who has requested the information. The question is what benefit will be gained?

Employees move from employer to employer on a regular basis. Is the employer to report on current employees only? How does the employer deal with retired employees who may have worked for 50 companies during the course of their career? Which employer lists that retiree? What value is this information?

While there will be disclosures, as noted above, those disclosures will be misleading and inherently capable of misinterpretation, at best, and utterly meaningless, at worst.

## Misleading Disclosure and Disclosure Theory

In accounting theory, the financial statements do not recognize or disclose a liability until the amount is probable and estimable. Expanding the withdrawal liability disclosure requirements beyond cases where the assessment is probable is comparable to requiring that companies disclose the impact of a lawsuit that has not been initiated, and is unlikely to be initiated. This approach clearly makes no sense.

Disclosing the estimated amount of the withdrawal liability, where withdrawal is not at least reasonably probable will not provide users of financial statements with decision-useful information. Instead, it will provide misleading and meaningless information which might discourage someone from investing in a financially secure company.

If a company decides to withdraw from a multi-employer pension plan that is not fully funded, it may be obligated to pay the plan an exit fee representing a portion of the underfunding. These very rarely lead to withdrawal liability assessments, regardless of the funded position of the plan. For example, in the construction industry the criteria under which an assessment would be made for a departing employer includes the requirement that the company continues to perform the same type of work, in the same geographic area, without contributing to the plan. In many cases where a plan does assess withdrawal liability, the withdrawing company does not pay the full amount of the assessment since the trustees of the plan will often negotiate a lower single-sum payment amount with the withdrawing company in order to receive as much money up front as possible.

We agree with FASB in that it is necessary and appropriate for companies that are likely to pay a withdrawal liability assessment to disclose this likelihood in their financial statements. At the same time, it is equally necessary and appropriate that this requirement be limited to situations where the assessment has more than a remote chance of occurring. Requiring disclosure of withdrawal liability in cases where the likelihood of a withdrawal is remote would be inconsistent with the nature of withdrawal liability and would mislead the readers of the financial statements.

When the likelihood of the liability occurring is improbable or remote, even if it could have a severe impact on the entity, it does not seem appropriate to add these financial disclosures, when it is unlikely that the liability will ever come to fruition.

If the FASB is intent on creating a disclosure requirement, it seems that a simple disclosure of the existence of a withdrawal liability, along with details of the chain of events that would need to occur in order for that withdrawal liability to be assessed, would be sufficient to provide transparency to financial statement users.

In conclusion, we do not support the proposed changes that would require the discosure of liabilities that are considered to have a remote chance of occurrence, and that would add unnecessary layers of costs to the participants of multi-employer pension funds and for the employers that contribute to these plans.

Sincerely,

Baden, Gage & Schroeder, LLC

Tina Perez, CPA

Craig Linnemeier, CPA