United Actuarial Services, Inc.
Actuaries and Consultants

November 1, 2010

Technical Director
File Reference No. 1860-100
FASB
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1860-100

Dear Sir or Madam:

On July 20, 2010, the Financial Accounting Standards Board (FASB) released an Exposure Draft, *Contingencies (Topic 450), Disclosure Of Certain Loss Contingencies,* which addressed the disclosure of loss contingencies in a variety of contexts including employer withdrawal liability (EWL) for a contributing employer in a multiemployer pension plan, environmental liability, warranty liability and litigation claims.

The disclosure thresholds were divided into two standards relating to the possibility of the loss contingency or its potential for a "severe impact" on the entity. These were (1) "at least a reasonable possibility (more than remote possibility) and (2) asserted claims with remote possibility of severe impact. [1] This Exposure Draft seemed reasonable and did not change the disclosure triggers for multiemployer pension plan contributors for EWL.

On September 1, 2010, FASB released an Exposure Draft entitled *Compensation-Retirement Benefits-Multiemployer Plans (Subtopic 715-80) Disclosure about an Employer's Participation in a Multiemployer Plan.*

Here, FASB proposed disclosure of extensive information by an employer for merely participating in a multiemployer pension plan. No similar disclosure is required for entities that were addressed in the *Disclosure of Certain Loss Contingencies.* This disclosure requirement would be akin to requiring every manufacturer to disclose what its liabilities would be if every item with a warranty it sold failed. A highly unlikely event and one whose "liability" disclosures would tend to muddy rather than make clear the true financial risk to the manufacturer.

We heartily endorse the lengthy analysis and insightful comments made by the National Coordinating Committee on Multiemployer Plans (NCCMP)[2] and would add only a few additional comments.

First, FASB comment BC2 indicates the new rules are in response for calls for "additional disclosures about an employer's participation in multiemployer pension and other postretirement benefit plans (multiemployer plans) to increase awareness of the commitments and risks involved with participating in these plans." The Comment even recognizes that "*Multiemployer plans have unique characteristics*" and that for disclosure to be meaningful, plan disclosure should take into account differences between plans. Yet, in spite of the huge differences in how employer withdrawal liability is triggered for construction industry plans (which comprise 54% of multiemployer pension plans, as compared to other multiemployer plans such as those in the retail food industry and the trucking industry or entertainment industry), the proposed disclosure standard fails to take such a critical difference into account, using a "one size fits all" disclosure.

Perhaps more meaningful than a disclosure requirement would be the development of an explanation of employer withdrawal liability and how it is triggered and calculated and require such to be attached as an information piece to an accounting statement, with a note that interested parties ask the employer for the information suggested by the NCCMP.

The assumption underlying the Exposure Draft is that withdrawal liability should be used as a proxy for an employer's share of a plans unfunded liability. That assumption is fatally flawed especially with construction industry plans because such contributing employers can avoid employer withdrawal liability by using the "exit" safe harbors for construction industry employers.

The interest in tying a plan's funded status to a "liability" is similarly flawed in that in multiemployer construction industry plans withdrawal liability can be totally obviated at will..

As the NCCMP and others have pointed out so artfully, an employer's withdrawal liability is out of date, constantly changing and may vanish from one year to the next depending on the investment returns, the strength of the job market and other factors. Given the ephemeral nature of EWL, asking for it to be reported is akin to reporting the position of clouds or other will' o wisps.

The lack of usability of the requested information on EWL is betrayed in FASB Q2 which asks question boils down to how useful.

> **Question 2:** Do you believe that disclosing the estimated amount of the withdrawal liability, **even when withdrawal is not at least reasonably possible**, will provide users of financial statements with decision-**useful information**? Why or why not?

HOW USEFUL IS INFORMATION ABOUT AN EVENT THAT IS NOT *AT LEAST REASONABLY POSSIBLE*??? A reasonably possible event is one which is more than remotely possible, per the *Loss Contingencies* Exposure Draft. It follows that an event that is not at least reasonably possible is only remotely or less than remotely possible.

In what other economic field is information that is only "remotely or less than remotely possible" considered useful?

Stated another way, how useful is a meaningless number? That is, until an employer withdraws, EWL is a phantom number – a hypothesis of an unlikely occurrence.

It seems on its face that the EWL number, (even an annual one, unless assessed) would not meet the legal criteria if the issue were whether such "evidence" of liability is an accurate reflection of an employer's liability. Under the Federal Rules of Evidence[3] it is unlikely that the disclosure of an unasserted claim would be judged to be relevant and is more likely to be considered "outweighed by the danger of unfair prejudice, confusion of the issues, or misleading"

By requiring the disclosure of such a mercurial number that has, at best, a remote of chance of becoming an actual liability, FASB confers an unjustified illusion of meaningfulness on the number. The Contingency Loss Triggers are sufficient to account for EWL because then it will be a real concrete number as it represents an "asserted claim."

For the above reasons we believe the proposed standard is unnecessary as a requirement and would suggest in the alternative that an information piece on multiemployer plans and the various triggers and methods of calculation of EWL for employer contributing to multiemployer plans be made available to interested parties. A requirement to include such an informational piece to an accounting statement might not be unreasonable.

Sincerely,

Michael P. Ewing, JD
Director of Research
United Actuarial Services, Inc.

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[1] **Disclosure Threshold**
450-20-50-1C An entity shall disclose information about a **contingency** if there is at least a reasonable possibility (that is, more than **remote** possibility) that a loss may have been incurred regardless of whether the entity has accrued for such a loss (or any portion of that loss). Disclosure is not required of a loss contingency involving an unasserted claim or assessment if there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment unless both of the following conditions are met:

a. It is considered probable that a claim will be asserted.
b. There is a reasonable possibility that the outcome will be unfavorable.

450-20-50-1D Disclosure of asserted but remote loss contingencies may be necessary, due to their nature, potential magnitude, or potential timing (if known) to inform users about the entity's vulnerability to a potential **severe impact**. An entity will need to exercise judgment in assessing its specific facts and circumstances to determine whether disclosure about a remote contingency is necessary. Factors that an entity should consider in making this determination include any of the following:

a. The potential impact on the entity's operations
b. The cost to the entity for defending its contentions
c. The amount of effort and resources management may have to devote to resolve the contingency.

A plaintiff's amount of damages claimed, by itself, does not necessarily determine whether disclosure about a remote contingency is necessary, although it could be one of the factors to be considered in this determination. Although some of the guidance in this paragraph (to help an entity determine whether disclosure about an asserted remote contingency is necessary) is written in the context of a litigation contingency, the disclosure threshold applies to all contingencies required to be disclosed in accordance with Section 450-20-50.
Contingencies (Topic 450) Disclosure of Certain Loss Contingencies

[2] Our final conclusion is that the following disclosures are reasonable and appropriate for the sponsors of multiemployer pension plans. Note that the first 5 disclosure items fall under the Multiemployer Plans Exposure Draft, while the 6th disclosure item falls under the Loss Contingencies Exposure Draft.

1. The contributions for the current reporting period
2. The estimated contributions for the next reporting period
3. The terms of the current contribution agreement, including the basis for determining the contribution amounts
4. The terms and expected impacts of funding improvement or rehabilitation plans that the multiemployer plan trustees have adopted
5. The annual payment amount that would be required in the event of a withdrawal
6. If it is reasonably possible that the company will be assessed withdrawal liability, the amount of this potential assessment

Disclosure of these six items will provide the readers of the financial statements with a thorough understanding of the impact that participation in the multiemployer plans has on the finances of the company, without unnecessarily burdening either the company or the plans. To the extent that the exposure drafts go beyond these items, the required information will be highly misleading to investors and lenders, and will place extraordinary burdens on companies and plans alike. We strongly urge FASB to consider reducing the list of disclosure items consistent with our recommendations.
NCCMP Comment Letter of September 20, 2010.

[3] **Rule 401. Definition of "Relevant Evidence"**
"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
Federal Rules of Evidence