From: <u>Hal Tepfer</u>
To: <u>Director - FASB</u>

Cc: Joseph F. Hicks; Greg Pastino; Kent A. Spade; Dave B. Reid, Jr. (PA)

Subject: Comment Letter for FASB's Proposed Accounting Standards Update Compensation—Retirement Benefits—

Multiemployer Plans (Subtopic 715-80)

**Date:** Monday, November 01, 2010 4:56:12 PM

### **Dear Technical Director:**

The Savitz Organization, Inc. is one of the country's largest actuarial consulting firms that specialize in multiemployer pension and postretirement healthcare plans. Our multiemployer clients are located throughout the United States, and include a wide range of unions and industries.

As pension and health actuaries, we thought it would be useful for us to comment on the recently-released Proposed Accounting Standards Update regarding an employer's participation in a multiemployer plan. We appreciate having the opportunity to provide the FASB with this Comment Letter.

## Withdrawal Liability

In the Proposed Standard, Subtopic 715-80-50-1B(m)(2) requires "The amount that is required to be paid on withdrawal from the plan as of the most recent date available, if that information is obtainable." For a pension plan, this is the employer's "withdrawal liability."

The Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") made changes to ERISA in an effort to protect participants against multiemployer plan losses. The MPPAA introduced the concept of "withdrawal liability" for an employer who participates in a multiemployer pension plan.

The calculation of an employer's withdrawal liability is, as you are likely aware, complex. And, as with many calculations performed by actuaries for pension funds, this calculation has relevance for <u>only the reason described</u> in the MPPAA. We believe that the intent of the MPPAA was to determine this value only in cases when an employer was actually withdrawing from a plan, <u>not</u> for the reporting of liabilities for an employer's ongoing participation in a multiemployer plan.

# **Exception for Construction Industry**

The Proposed Standards Update does not distinguish between "construction and building trade" funds and other multiemployer funds in requiring, "the amount that is required to be paid on withdrawal from the plan."

However, the MPPAA describes special rules for certain industries, most notably the

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building and construction industry . Employers who participate in a multiemployer pension plan that covers construction industry members receive an exemption from MPPAA's withdrawal liability rules. Generally, a construction industry employer is permitted to withdraw from a plan without incurring any withdrawal liability <u>unless</u> the employer does not meet the rules for a construction industry exception.

The only situations in which a construction industry employer will incur a withdrawal

liability are if both (1) the employer ceases to have an obligation to contribute to the plan; and (2) either the employer continues to perform the same or similar work (as the employer had been performing while a contributor to the plan) in the jurisdiction of the collective bargaining agreement, or the employer resumes such work within five years after the cessation of the obligation to contribute, and does not renew the obligation at the time of the resumption.

"Withdrawal liability" for an employer currently participating in a plan that covers construction trades has no relevance <u>unless</u> both of these conditions apply.

### Retiree Healthcare Calculations

The Proposed Standard Update addresses "employer's participation in a multiemployer plan (for example, for pension or retiree healthcare)." Subtopic 715-80-50-1B(m)(2) asks for the amount that is required to be paid on withdrawal from the plan without distinguishing between pension and retiree healthcare plans.

Unlike a multiemployer pension plan, a multiemployer healthcare plan is not governed by the provisions of the MPPAA. Therefore, there is no concept similar to "withdrawal liability" for such plans. While it is true that employers' contributions to a multiemployer healthcare plan often help pay for benefits to retired members, the employer is not required under MPPAA to make any payment to the health plan upon the employer's ceasing contribution to the plan.

We suggest that all contributing employers to multiemployer healthcare plans be exempt from stating the amount to be paid on withdrawal from such plans. As stated, there is no MPPAA requirement that any type of liability be calculated for the employer upon withdrawal from the plan.

### Possible Alternative to "Withdrawal Liability" calculation

Aside from the "withdrawal liability" requirement, and simple computations of a mathematical nature (for example, Topic 715-80-50-1B(h) asks for "Percentage of the employer's employees covered by such plan(s)), we cannot comment on the ease of collection of the information that you are asking be provided in an employer's financial statement.

However, we can suggest an alternative measure to "withdrawal liability."

After completing the calculation of an employer's withdrawal liability, the plan actuary computes a "payment schedule" for the employer. The number of years for which the employer is to make payments to the plan is determined by looking at the amount of

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each payment. The annual payment is computed as

The average annual number of "contribution base units" (for example, "hours worked") for the period of 3 consecutive plan years, during the period of 10 consecutive plan years ending before the plan year in which the withdrawal occurs, in which the number of contribution base units for which the employer had an obligation to contribute under the plan is the highest

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The highest contribution rate (for example, "cents per hour") at which the employer had an obligation to contribute under the plan during the 10 plan years ending with the plan year in which the withdrawal occurs

This result is the level annual payment that the employer would be required to pay during

the period of years (limited to 20) necessary to amortize the employer's withdrawal liability, if any. This figure is the denominator of the following equation:

Years of Payment = Employer's Withdrawal Liability

Average Base Units x Highest Contribution Rate

We believe this calculation would meet your goal of providing greater transparency regarding an employer's obligation, while both producing a relevant and simply-calculated metric:

- An employer who had a relatively large portion of the plan's "contribution base units" would have a relatively larger calculation than an employer who had a relatively small portion of such contribution base units.
- This measure is more readily reviewable by the employer's auditor and more easily reproduced by the employer's auditor than the employer's withdrawal liability.
- The calculation depends on only the employer's data (historic base units; historic contribution level to the plan), and does not require information from any other contributing employer to the plan.
- This calculation can be performed by the employer and reviewed by the employer's auditor. No actuarial assistance is needed.

In summary, we applaud the FASB both for producing this Proposed Standard, and for asking for comments about it. We believe that increased transparency about an employer's participation in a multiemployer plan is a well-intentioned idea. But, we believe that the disclosing of an employer's withdrawal liability <u>does not</u> increase the transparency about an employer's participation in pension and postretirement healthcare plans.

Thank you for taking time to read this Comment Letter.

The Savitz Organization, Inc.

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ERISA §4203(b)

ERISA §4219(c)(1)(C)