



ASSOCIATION OF THE WALL AND CEILING INDUSTRY

SERVING CONTRACTORS, SUPPLIERS, DISTRIBUTORS AND MANUFACTURERS

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Union Contractors Advisory Committee*

September 17, 2010

Mr. Russell Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Via email: director@fasb.org

Re:File Reference No. 1840-100
Disclosure of Certain Loss Contingencies

Dear Sir:

Thank you for the opportunity to comment on the Exposure Draft referenced above. The Union Contractor Council of the Association of the Wall and Ceiling Industry (AWCI) represents more than 700 building contractors that contribute to multiemployer pension plans. These comments will be limited to disclosure of potential withdrawal liability for construction industry employers that contribute to multiemployer pension plans.

SUMMARY

The Topic 450 Exposure Draft describes the objective of the proposed amendments, "to provide adequate and timely information to assist current users in assessing the likelihood, potential magnitude, and potential timing (if known) of future cash outflows associated with loss contingencies". With respect to multiemployer pension plan liabilities, and especially those within the construction industry, the proposed amendments would require the disclosure of speculative and misleading information. Further, it is unlikely that the information would be timely. The current disclosure standard is adequate to inform financial statement users of potential liabilities related to an employer's participation in a multiemployer pension plan. The Proposed Accounting Standards Update for Topic 450 should be amended to eliminate the proposed changes to paragraphs 450-20-15-2, 715-80-35-2, and 715-80-50-2.

THE IMPACT OF THE PROPOSED CHANGES IS UNCLEAR

The proposed changes to paragraphs 715-80-35-2 and 715-80-50-2 delete the language stating that an employer would need to disclose potential withdrawal liability only when such a contingency becomes "either probable or reasonably possible." The impact of the proposed changes is unclear; that is, does FASB intend to require disclosure of multiemployer plan withdrawal liability when it is only "remotely possible" that it could be imposed? Or is a "reasonable possibility" standard maintained by the proposed Disclosure Threshold paragraph 450-20-50-1C?

The proposed changes appear on their face to lower the disclosure threshold for multiemployer plan withdrawal liability to the "remotely possible" standard. Such a low threshold could require an employer to disclose potential withdrawal liability

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whenever a multiemployer plan to which he has recently contributed is less than 100% funded, whether he is considering a withdrawal from the plan or not. These comments are written as such.

FASB's CURRENT DISCLOSURE STANDARD IS SATISFACTORY

The unique nature of the building and construction industry is recognized in the Employee Retirement Income Security Act (ERISA) via the construction industry withdrawal liability exemption at 29 U.S.C. § 1383(b). This federal law exempts construction industry employers from multiemployer plan withdrawal liability in certain cases, most significantly when an employer ceases to do business. As a result, the imposition of a withdrawal liability on a construction industry employer occurs almost exclusively only when an employer ends his signatory relationship with the local union and the related multiemployer pension plan *and* continues to perform the same construction work in the same geographic area. A decision to 1) terminate participation in the multiemployer plan, and 2) to do the same trade construction work are planned events. FASB's current accounting standard already requires disclosure in this case.

The proposed changes to paragraphs 715-80-35-2, and 715-80-50-2 delete the language stating that an employer would need to disclose potential withdrawal liability only when such a contingency becomes "either probable or reasonably possible." By deleting that language, it is understood that such reporting would become necessary even if there is only a remote possibility that withdrawal liability could be imposed. There has been no indication that the lower disclosure threshold is necessary.

FASB's PROPOSED CHANGES WOULD REQUIRE MISLEADING DISCLOSURES

Without being tied to a specific planned event, withdrawal liability figures can fluctuate significantly according to factors such as investment market performance, industry activity, and each employer's individual activity. An individual employer's withdrawal liability estimate is provided based on historical information that may or may not factor into a final withdrawal liability assessment depending on its timing. In fact, any individual employer's final withdrawal liability assessment could be dramatically different from previous estimates. Further, the construction industry withdrawal liability exemption effectively allows the employer to choose when or even if withdrawal liability will be assessed. Therefore, an actual withdrawal liability assessment is likely to differ substantially from estimates due both to the fluid nature of the estimates and the timing of the final assessment. As a result, withdrawal liability is a highly speculative and even theoretical concept to any employer who is not planning an imminent withdrawal.

PROPOSED CHANGES SHOULD BE LIMITED TO A SPECIFIC EXPOSURE DRAFT

Proposed Accounting Standard Updates related to an employer's participation in a multiemployer plan should be limited to a single Exposure Draft. FASB has recently released two Exposure Drafts, Topic 450 (File Reference No. 1840-100) and Subtopic 715-80 (File Reference No. 1860-100), which propose changes to disclosures related to an employer's participation in a multiemployer plan. Both Exposure Drafts are currently in their respective comment periods. The proposed changes to the disclosure threshold contained in the Topic 450 Exposure Draft and the proposed disclosures contained in the Subtopic 715-80 Exposure Draft are sufficiently related as

to merit a single discussion.

Each of the aforementioned Exposure Drafts refers to paragraph 715-80-50-2. Paragraph 715-80-50-2 includes the disclosure threshold for potential withdrawal liability related to multiemployer pension plans. The Topic 450 Exposure Draft proposes to lower that threshold by removing the current “probable or reasonably possible” language, which is understood to lower the disclosure threshold to “remotely possible”. Paragraph 715-80-50-2 appears in the Subtopic 715-80 Exposure Draft, but that Exposure Draft does not propose any changes to the paragraph. The lack of any proposed changes to paragraph 715-80-50-2 in the Subtopic 715-80 Exposure Draft gives rise to questions about FASB’s intent with the change proposed in the Topic 450 Exposure Draft: Does FASB intend to pursue the proposed disclosures in the Subtopic 715-80 Exposure Draft in lieu of the proposed lower disclosure threshold contained in the Topic 450 Exposure Draft? If not, do the proposed changes in the two Exposure Drafts require redundant disclosures? At a minimum, one proposed change should be settled prior to the discussion of the other. It would be better still to review all proposed changes related to an employer’s participation in a multiemployer plan together in a single Exposure Draft.

REVIEW OF FASB’S QUESTIONS FOR RESPONDENTS

Question 1: Are the proposed disclosures operational? If not, please explain why.

The proposed updates related to the disclosure of potential withdrawal liability are not operational.

Many construction employers contribute to multiple multiemployer pension plans; large employers may contribute to dozens or more. Only an actuary or administrator associated with the specific pension plan can reasonably produce an accurate withdrawal liability estimate for a contributing employer. Many if not most pension plans or their actuaries themselves charge contributing employers for this service, which can be very time consuming and therefore costly. The Topic 450 Exposure Draft appears to propose that these estimates be calculated and disclosed for each plan the employer has contributed to in recent years, a monumental task.

Withdrawal liability figures are typically not available until several months following the end of a plan year. It is very likely that substantial changes in withdrawal liability figures would take place by the time they could be shown on an employer’s financial statements, causing the disclosures to be inaccurate.

Question 2: Are the proposed disclosures auditable? If not, please explain why.

Disclosures related to potential withdrawal liability are not reasonably auditable. Withdrawal liability estimates would be provided to employers by each pension fund’s actuary and/or each pension fund’s administrator. Withdrawal liability figures cannot be independently verified by an auditor; an independent actuary, at least, would be required to verify withdrawal liability figures, which is a significant task. An auditor would have to rely on the same withdrawal liability figures provided to the employer unless an independent actuary was retained specifically for the review of the withdrawal liability figures.

Question 3: Not addressed.

Question 4: Is the proposed effective date operational? If not, please explain why.

The proposed effective date does not provide sufficient time to prepare and include the required disclosures. The calculation of potential withdrawal liability is a significant task that requires substantial time and effort from multiemployer pension plan administrators and actuaries. This information is typically provided only by special request, and a fee is usually charged for the service. Larger multiemployer pension plans could have hundreds of contributing employers. Providing withdrawal liability estimates to all contributing employers would likely require plan administrators to implement program and/or recordkeeping changes and plan actuaries to provide dedicated staff to the task.

Employers would also bear a substantial burden in gathering potential withdrawal liability information. It is likely that an employer would be charged a fee for each withdrawal liability estimate. The delivery of those estimates would probably be significantly delayed due to the increased demand for them. Larger employers – those who contribute to many multiemployer pension plans – would likely have to dedicate a staff member to compiling withdrawal liability estimates well in advance of the employer's audit. For these reasons and those in answer to Question 7, the effective date of any changes related to the disclosure of potential withdrawal liability should be delayed a minimum of two full years following their final approval.

Question 5: Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?

The proposed disclosures related to potential liability would mislead and potentially confuse financial statement users. As previously stated, the construction industry operates under a withdrawal liability exemption contained in federal law, which greatly limits the circumstances under which withdrawal liability is imposed. The construction industry withdrawal liability exemption essentially affords a construction employer a choice regarding the assessment of multiemployer pension plan withdrawal liabilities. Thus, withdrawal liability is merely theoretical to any employer for whom a withdrawal is not at least probable or reasonably possible, which is the current disclosure standard. Moreover, even sophisticated financial statement users cannot be expected to fully understand the construction industry withdrawal liability exemption and to integrate it into their review of an employer's financial statements. The absence of such knowledge and/or its accurate application would lead many financial statement users to misunderstand the financial position of the employer.

The dynamic nature of potential withdrawal liabilities could further contribute to misleading disclosures. As previously explained, withdrawal liability estimates would likely be inaccurate by the time they could be disclosed on financial statements. The disclosure of inaccurate information would not aid financial statement users in understanding the financial position of the company.

Question 6: Not addressed.

Question 7: The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

The proposed deferral is insufficient. FASB has received numerous comments that outline serious concerns with the proposed rules related to the disclosure of potential withdrawal liability. FASB may or may not be persuaded by those comments, but the magnitude of the proposed changes is clear. For that reason, *any* changes regarding disclosures to multiemployer pension plans should be implemented only after at least two full years following their final approval. Such a delay might allow the industry an opportunity to prepare for their impacts.

Question 8: Not addressed

CONCLUSION

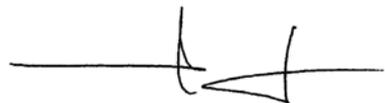
FASB's current rules require employers to disclose liabilities related to multiemployer pension plans where those liabilities are "either probable or reasonably likely." This standard requires disclosure of a construction industry employer's withdrawal liability whenever financial statement users should be made aware of those potential liabilities. A lower disclosure threshold is unnecessary and would only mislead and confuse financial statement users. I respectfully request on behalf of the AWCI – Union Contractors Council that the Topic 450 Exposure Draft be amended to eliminate the proposed changes to paragraphs 450-20-15-2, 715-80-35-2, and 715-80-50-2.

If FASB is not persuaded by these arguments, I respectfully request that the proposed changes be reviewed as part of a single Exposure Draft specific to proposed changes related to an employer's participation in a multiemployer plan.

Finally, I respectfully request that the implementation of any eventual changes related to an employer's participation in a multiemployer plan be delayed for a minimum of two full years following their final approval in order that the industry may prepare for their impacts.

I am grateful for this opportunity to comment on FASB's Topic 450 Proposed Accounting Standards Update. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Weber", written over a horizontal line.

Michael Weber
Chairman