Plumbing-Heating-Cooling Contractors–National Association

Pride In Our Past—Faith In Our Future

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
Norwalk, CT 06856-5116
director@fasb.org

RE: File Reference Number 1840-100

Dear Mr. Golden,

On behalf of the more than 3,100 plumbing and HVACR businesses and 85,000 employees represented by the Plumbing-Heating-Cooling Contractors - National Association (PHCC), I appreciate the opportunity to comment on the Exposure Draft of the Accounting Standards Update on Contingencies (Topic 450) titled, *Disclosure of Certain Loss Contingencies,* issued July 20, 2010 by the Financial Accounting Standards Board (FASB).

The stated reason the FASB believes these additional disclosures are required is to provide analysts and investors with sufficient information to make informed decisions about the potential liabilities of the companies in which they are considering investing. With the very pension plans to which these employers are contributing comprising one of the largest blocks of institutional investors, we understand FASB's efforts; however, we have serious concerns that the specifics of these proposals will not only fail to provide investors with current and reliable information on which to make investment decisions, the information being proposed for inclusion is likely to be misleading, causing investors to shy away from providing essential capital to financially sound companies.

Loss Contingencies

Regarding the *Loss Contingencies* Exposure Draft (Topic 450), the sole impact on multiemployer plans is the determination of the threshold for when contributing employers must disclose potential withdrawal liability. The current standard only requires disclosure when there is a reasonable probability that the liability will be incurred (that is, that the employer will withdraw from the plan and the plan will assess withdrawal liability).

It is FASB's intention to expand the criteria under which a company is required to disclose potential withdrawal liability assessments and introduces the concept of severe impact as a new criterion for determining when disclosures will be required. As it is currently worded, this Exposure Draft can be interpreted in very different ways. Unfortunately, the more conservative reading would require employers with only a "remote" chance of incurring withdrawal liability to disclose it in the footnotes to their financial statements. As they would read the standard, all companies that participate in multiemployer plans must disclose their potential withdrawal liability if there were even a remote possibility such liability could be assessed or if such an assessment could have a severe impact on the company.

Discussion

There are many problems with these proposed requirements. To begin with, the sheer volume of material required to comply with these disclosures will place an unreasonable burden on employers, particularly those that participate in a large number of multiemployer plans. The proposal will also place a large burden on the plans, which may be required to perform withdrawal liability calculations for each and every employer on an annual basis. Additionally, the costs of preparing this information on this scale will dwarf expenditures for similar determinations under existing standards.

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Companies have limited resources to devote to complying with additional disclosure obligations. Funds used to comply with these rules mean fewer resources for a company to use in expanding its business and creating new jobs—something that must take priority given our continued economic and unemployment crisis. Regulators simply must recognize that the resources available for compliance
are not infinite, and prioritize among the various new obligations that they wish to impose, in the same way that business must prioritize in choosing among competing demands and individuals must do so as well in setting their household budgets.

The statutory framework governing withdrawal liability in the construction industry injects such variation into the process that to disregard the effect of industry specific withdrawal liability rules in imposing a "one-size-fits-all" standard makes this information largely useless with respect to the construction industry. Aside from the practical considerations, the information required by this exposure draft will be highly misleading to readers of the financial statements. In most cases, the most recent available withdrawal liability estimates will be more than a year out-of-date when the financial statements are published. Given the highly volatile nature of the financial markets, this information will not provide a useful understanding of the current position of the plan.

PHCC is also concerned about the highly speculative nature of several of the disclosure items. While it is appropriate to ask contributing employers to disclose readily available information such as funding improvement or rehabilitation plans that have been adopted and future contribution rates that have been negotiated in executed collective bargaining agreements, speculating about how any given employer may be affected by plans under consideration but not adopted is just that – speculation. This approach is hardly a reliable basis for financial reporting and highly inappropriate to be included among the required disclosures whose intended audience is current or potential investors or lenders.

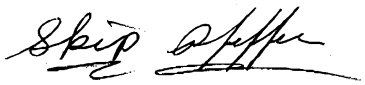
Changing the reporting requirement for possible withdrawal liabilities for multiemployer plans is unnecessarily burdensome. The proposed amendments to Subtopic 7 15-80 change conditions governing when a company that sponsors a multiemployer plan must recognize liability for a potential withdrawal from a multiemployer plan. Specifically, the amendment deletes the phrase 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, such reporting would become necessary even if there is only a remote possibility that withdrawal liability could be imposed. There has been no indication such reporting is necessary. Moreover, requiring reporting of such a remotely
contingent event could negatively skew the financial picture of the company and negatively impact the financial credibility of multiemployer plan sponsors.

This proposal also requires information that will injure investors by impeding the ability of an employer to defend itself in ongoing litigation and by providing plaintiffs' lawyers with non-public information that can be used to subject employers to new lawsuits. It makes no sense to turn disclosure requirements into a source of expanded liability and new lawsuits that will impose significant harm on employers, and thus directly injure the financial interests of the very shareholders that the disclosure requirements are intended to protect. They reflect a significant lack of understanding of the realities of the litigation process and, as a result, will inflict very substantial costs upon employers.

Conclusion

While conceptually, asking for the reams of information proposed in the *Multiemployer Plans* draft may seem like a good idea, the associated costs, practical administrative implementation and legal concerns far outweigh the marginal benefit to potential end users they will produce. It is PHCC's hope that FASB will be receptive to suggestions to modify their initial proposals and consider alternatives that will enable them to obtain greater transparency in a more measured way that does not produce exaggerated or misleading information that can have a deleterious effect on either the employers that sponsor multiemployer plans or, ultimately, the employees/participants of those plans.

Respectfully Submitted,



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