The Surety & Fidelity Association of America

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September 20, 2010

Via Electronic Mail

Financial Accounting Standards Board File Reference No. 1840-100, FASB 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116 Attn: Technical Director

Re: Exposure Draft

Proposed Accounting Standards Update

Topic 450

Disclosure of Certain Loss Contingencies

File Reference No. 1840-100

The Surety & Fidelity Association of America ("SFAA") is a trade association of companies that are licensed to write surety and fidelity bonds. SFAA member companies collectively account for the vast majority of performance and payment surety bonds written in the United States. A performance bond secures a construction contractor's obligation to perform the contract fully. A payment bond secures the contractor's obligation to pay its subcontractors and suppliers. When underwriting a contractor to determine whether to provide performance and payment bonds for a given project, the surety evaluates the contractor's financial strength to support the project and its entire operation. Therefore, sureties are significant users of financial statements. The contractor's financial statement is a crucial tool in evaluating the contractor's financial position. Many construction contractors participate in multi-employer plans. With this context, we submit comments regarding the captioned exposure draft. In particular, we provide comments regarding the disclosure requirements regarding multi-employer plan withdrawal liability set forth in Section 715-80-35 and 715-80-50.

The proposed amendments in Section 715-80-35-2 and 715-80-50-2 appear to revise the threshold for disclosure of withdrawal liability as a loss contingency by deleting the current threshold of "probable or reasonably possible." The revision either creates unnecessary ambiguity or results in a financial statement in which the value of disclosures regarding withdrawal liability is diminished considerably.

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

The proposed disclosures are not operational and provide only limited value. The revised Sections 715-80-35-2 and 715-80-50-2 merely state that the provisions of Topic 450 apply. Therefore, does the deletion indicate that the disclosure thresholds of proposed Sections 450-20-50-1C and 1D apply? And if so, which provision applies? Section 450-20-50-1C requires disclosure of a contingency if there is "at least a reasonable possibility" that a loss may have been incurred. If this standard applies, the threshold is reasonable, but more specific and clear guidance is suggested. Without more specific guidance, there is a danger that ambiguity will lead to greater subjectivity in determining what standard applies and how to apply that standard.

We recommend that the threshold for disclosure of withdrawal liability be set forth in the applicable section (Sections 715-80-35-2 and 715-80-50-2) rather than merely a vague reference to Topic 450. In addition, the specific threshold should recognize the clear legal standard for the imposition of withdrawal liability in the construction industry. Imposition of withdrawal liability on a construction industry employer generally occurs only when the employer ends its relationship with the union and the pension plan, and continues to perform the same construction work in the same geographic area.

Section 450-20-50-1C requires disclosure of a contingency that is remote if the magnitude or timing of the contingency would have a severe impact. If the effect of such a threshold is that the amount of withdrawal liability must be disclosed in all cases by every contributing employer, no matter how remote the incurrence of such liability is, then the proposed standard is not workable. The cost and burden for compiling such information would outweigh the value of disclosure. As noted above, withdrawal liability is imposed in only limited circumstances per federal law. A disclosure of liability when the contractor is a going concern and does not intend to exit the plan has limited value and could otherwise mislead the user. In addition, the disclosures regarding the plans likely will be out of date and therefore not useful to the user. Pension plans are valued on an annual basis. However, because the valuation process can be complex and time consuming, valuation information generally is not available to the entity until six to nine months after the valuation date. Notably, United States law requires plan administrators to report plan information by filing a Form 5500. The form can be filed as late as the tenth calendar month after the plan year end. An entity typically will gather financial information regarding its operations, assets and liabilities during the quarter after the fiscal yearend. Therefore, because the plan information will not be available until later in the year, the most recently available plan information for purposes of the financial statement is a year out of date. For example, in preparing financial statements for the year ended December 31, 2009 (which likely will occur in the first quarter of 2010), the 2009 plan information likely is not available at that time. The entity would need to use the 2008 plan information to make its disclosures.

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In light of the foregoing, we request that the Financial Accounting Standards Board reconsider the revisions proposed for Sections 715-80-35-2 and 715-80-50-2. We suggest that the disclosure rules should reflect the statutory context for when withdrawal liability is incurred by a construction industry multi-employer pension plan.

Thank you for your consideration.

sincerely,

Robert J. Duke