October 28, 2010

Mr. Russell G. Golden
Technical Director
File Reference: 1860-100
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference: 1860-100

Dear Mr. Golden:

The International Foundation of Employee Benefit Plans ("Foundation") is a leading source of education for the employee benefits community. The Foundation membership includes representatives of all sectors of employee benefit plans, including 15,000 members representing labor/management jointly administered multiemployer trust funds to which labor organizations negotiate employer contributions for members to provide employee benefits ("Multiemployer Plans"). These Multiemployer Plans are maintained pursuant to one or more collective bargaining agreements with one or more labor organizations and more than one employer (ERISA section 3(37)(A)), and are covered by the withdrawal liability rules of the Multiemployer Pension Plans Amendment Act of 1980, as amended. In addition to these 15,000 members from the Multiemployer Plan sector, the Foundation's membership includes numerous administrators and other professionals involved with the operation and administration of those Trust Funds.

This submission identifies factors that the Multiemployer Plan community believes are important in evaluating the appropriateness of the subject FASB Exposure Draft ("Exposure Draft") regarding disclosures for employer's participation in a Multiemployer Plan (Reference No. 1860-100). The Foundation has received comments from its membership involved with Multiemployer Plans regarding the Exposure Draft expressing concerns with the nature of certain of the disclosures and we are reporting several of those points in this submission.





Under the proposed Exposure Draft, an employer would be required to provide information about its participation in a Multiemployer Plan including description of the plans in which the employer is involved, the employer's contractual commitments to the plans, and the expected potential impact of plan withdrawal obligations. These disclosures would include the following:

- The amount that is required to be paid on withdrawal from a plan as of the most recent date available;
- A description of how benefit levels for plan participants are determined;
- A description of the employer's exposure to significant risks and uncertainties arising from its participation in a plan including information on the extent to which the employer may be liable to a plan for the other participating employer's obligations;
- A description of the funding improvement plans or rehabilitation plan;
- The total assets and accumulated benefit obligations of a plan as of the most recent financial statement plan year-end and for comparability, other corresponding prior periods;
- A description of the contractual arrangements covering the employer's participation in the plan, including information of the employer's contribution rates;
- The employer's contributions as a percentage of total contributions to the plan;
- The percentage of the employer's employees covered by a plan;
- The percentage of the employer's employees covered by the plan compared to the total plan participants, including the percent of active and retired employees;
- The expected contributions for the next annual period;



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> Known trends and contributions, including the extent to which a surplus or a deficit in a plan may affect future contributions.

Most of the comments that the Foundation has received indicate that the required disclosure may be misleading and contain out of date information and the volume of the disclosure may be a distraction rather than an assist to the reader of the financial statements. Also, information concerning retirees of an employer from a Multiemployer Plan does not appear relevant and can be very misleading because employees may work for many different employers who are part of the pool of employers under the Multiemployer Plan. FASB should balance the potential for a reader of the financial statements misunderstanding the new disclosures and the administrative time and costs involved with providing the information against the potential benefit to the reader from the information. It appears that part of the potential confusion from the expanded disclosures in the Disclosure Draft relates to the fact that a financial statement reflects an employer's financial standing as of a point in time whereas participation in a Multiemployer Plan assumes the funding of pension liabilities over the working lifetime of affected employees by annual contributions as distinguished from funding as of that point in time.

The comments that have been submitted by Foundation members regarding the Exposure Draft echo the points and concerns in other submissions to FASB regarding the Exposure Draft. While the withdrawal liability disclosures have the greatest potential for readers to misunderstand the true financial standing of an employer, FASB should evaluate the other requirements from the standpoint of the usefulness of the disclosures given timing issues and the volume of the disclosures and the costs associated with such disclosures. Does the Exposure Draft enhance transparency of an employer's actual liability under a Multiemployer Plan which was the underlying motivation behind the Exposure Draft? The fact that the disclosures will contain outdated and speculative information may pose a greater concern because a reader may misunderstand the employer's financial position based on the disclosures provided for in the Exposure Draft. The following are some supplemental points offered for your consideration in evaluating the appropriateness of disclosures in the Exposure Draft.



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Administrative Burden on Pension Plans. In order to comply with the Exposure Draft, employers will need to collect information such as withdrawal liability estimates from plan administrators. A Multiemployer Plan has a central administration for all participating employers. Many Multiemployer Pension Plans are comprised of hundreds of employers yet most plans currently receive only a handful of requests for withdrawal liability estimates. The Exposure Draft creates the potential for requests for withdrawal liability estimates by all employers which could place undue strain on already stretched administrative staffs due to budget constraints which reflect the downturn in the economy. Also, because several of the disclosures involve information beyond that which plans are required to furnish to an employer under ERISA such as under ERISA sections 101(f) and 101(d), a question is raised as to whether development and gathering of the information by a Multiemployer Plan for an employer is a proper function for the plan not to mention the issue with the plan absorbing the costs of developing and providing the information. Because the benefit from the disclosure appears solely focused on the employer and those dealing with the employer as distinguished from the plan and its participants, it is likely that the Department of Labor could rule that the cost of developing and providing the information is not a proper plan function or expense. This should be clarified with the Department of Labor prior to imposing those types of disclosures.

At a minimum, there should be serious consideration of pushing the effective dates of the disclosures under the Disclosure Draft back by a year or two in recognition of the need to develop systems and processes to obtain information for the expanded disclosures.

2. Administrative Burden on Employers. Compiling the information under the Exposure Draft will require additional accounting costs in preparing an employer's financial statements. Employers will also incur additional costs to obtain withdrawal liability estimates on an annual basis because plans generally charge a fee to employers requesting a withdrawal liability estimate. In addition, employers that participate in numerous Multiemployer Plans would incur the costs from each plan of compiling the information. It is not uncommon for employers with locations beyond a single geographic area to participate in numerous Multiemployer Plans each of which would have its own withdrawal liability rules.



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The Disclosure of Potential Withdrawal Liability May be Misleading. 3. Withdrawal liability is not a true contingency and an employer only has a hypothetical liability until it decides to withdraw from a plan. Disclosing a plan's withdrawal liability information merely because an employer participates in a plan disregards the point that an organized employer must negotiate out of the affected Multiemployer Plan before withdrawal liability can be triggered or in the case of a partial or complete withdrawal involving a closing, a discussion with the affected union regarding the effects of the closing. ERISA's highly complex withdrawal liability rules make it difficult for employers to explain to unfamiliar readers of their financial statements the actual remoteness of any liability arising from a withdrawal. In this regard, the method for determining withdrawal liability, the allocation of withdrawal liability among participating employers and the payment schedule may differ from plan to plan and represent entirely different situations but a reader unfamiliar with each of the plan's specific withdrawal liability rules will not be able to appreciate the differences. Also, there are situations where withdrawal liability is not assessed even when an employer ceases to have an obligation to contribute to the plan. An example is the construction industry rule which provides that an employer does not incur withdrawal liability if it ceases to have an obligation to contribute to a plan unless the employer continues to perform work within the jurisdiction of the affected collective bargaining agreement or resumes the same type of work in the jurisdiction within five years.

As a practical matter, the construction trades rule results in few assessments of withdrawal liability for employers withdrawing from building and construction industry pension plans. However, readers of financial statements containing an employer's withdrawal liability estimate will unlikely be able to grasp the true impact of this liability on the employer. It is likely that a reader would not distinguish between the special construction industry rules and the regular rules of withdrawal liability which may apply in a retail or manufacturing setting.

There were also special rules for the entertainment industry which has substantial participation in Multiemployer Plans and its rules substantially diminish the number of withdrawal liability assessments. Notwithstanding, a reader of the financial statements who is unfamiliar with the special rules would not grasp the distinction.

A reporting of withdrawal liability information in an employer's financial statements should only involve those situations where it is probable that there will be a withdrawal liability assessment such as an employer's withdrawal from the plan or an announced business plan that would include a withdrawal from the plan.



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It also should be noted that an employer's obligation to pay withdrawal liability to a plan is determined by the employer's contributions to the plan for prior periods. In this regard, the intent of the withdrawal liability statute was to provide that an employer would continue contributing at approximately the same level of contributions it had been contributing to the plan in the past without taking into account substantial near term reductions in either the contribution rate or covered employees. Therefore, it would appear that the pertinent information in understanding an employer's obligation is its annual withdrawal liability payment which would be continued to the affected plan until either its withdrawal liability is paid in full or it reaches the 20 year maximum payment. This limitation is often referred to as the "20 year cap" because if the employer's ongoing annual contribution obligation paid for 20 years is less than the total withdrawal liability amount assessed, then the 20 year cap limits the employer's obligation for the assessed amount. As a result, a more pertinent figure for disclosure in the financial statement would be the employer's recent contribution history because it would disclose the level of an employer's continued annual payments if it were to withdraw. Alternatively, the note could merely say that if the employer withdraws from plan x, its obligation to contribute to the plan following its withdrawal is an estimated amount of xx per year until its assessed withdrawal liability is paid or the payments continue for 20 years whichever is earlier. This would give the reader a true reading of the employer's obligation which is essentially to continue contributions on an annual basis for up to 20 years as distinguished from the total withdrawal liability payment.

Ability of an Employer to Obtain a Surety Bond or Financing. Disclosures of total withdrawal liability amounts could be misread, as noted above, and adversely impact an employer's ability to obtain loans to continue the business for which contributions are payable. Because the disclosure may be misunderstood by loan underwriters, banks may steer away from making loans to employers with withdrawal liability amount disclosures on their financial statements, even if there is no probability of the employer withdrawing from the Plan. Loan officers are likely to misinterpret any withdrawal liability disclosure as a potential liability even if in reality it is only a remote possibility. Also, employers with current loan agreements may have difficulty satisfying covenants under those agreements if the withdrawal liability which is not probable, is disclosed in



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the financial statements. In addition, employers in the construction industry often must comply with strict surety bond requirements before participating in a new construction project. The disclosure of withdrawal liability on the employer's financial statements may jeopardize the employer's ability to receive the necessary bonds for a project even when it is unlikely that withdrawal liability will ever be assessed to the employer. This could have an unintended adverse input on both the plan and the employer because the employer may lose the job and the contributions for the job are lost for the plan.

The Latest Withdrawal Liability Information is Likely at Least a Year Old. Withdrawal liability calculations relate to the actuarial valuation of a plan for the year preceding the year in which the withdrawal actually occurs. Practically speaking, it takes 6-9 months following the end of the plan year for the final actuarial information to be completed and withdrawal liability estimates made based upon that valuation. Therefore, in many cases, the employer audit is completed before the withdrawal liability amount is finalized and the disclosure is based on withdrawal liability information that is two years old. Also, the disclosure in the Disclosure Draft for a Multiemployer Plans' accumulated benefits would likely be based on the Plan's last audited financial statements which means that the accumulated benefit obligation is likely two years old when it is reflected in the employer's financial statement. Also, because of the lag time to complete the actuarial report, the withdrawal liability amount that would be shown would be more than one year old and would not be the amount used if there was a withdrawal. In addition, Multiemployer Plans will have different plan years which compounds the problem for employers participating in several plans. The disclosure of the contribution history, which does not dramatically change from year to year, and reflects the employer's annual continued obligation if it were to withdraw would be a more meaningful disclosure.

The fact that the information is likely to be more than a year old coupled with the significant changes that can impact Multiemployer Plans funded status from year to year underscores the potential for misleading information in the disclosure based upon the proposed Exposure Draft. In this regard, large swings in financial markets can



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either significantly improve or reduce a plan's funding ratio and the volatility in the financial markets was underscored by the significant swings in the equity and fixed income markets that occurred during 2008 and 2009. Withdrawal liability information in a financial statement based upon the 2008 asset values of a pension plan which is reflected in the employer's financial statements at the end of 2009, may show a significant withdrawal liability number which is inapplicable to the employer if it subsequently withdraws because the applicable liability is substantially lower by the time the information is reflected in the employer's financial statements due to the improved financial conditions.

Outdated or Misleading Information May Adversely Impact Multiemployer 6. Plans. For the reasons described above, the withdrawal liability amount is likely to mislead and be out of date when the employer's financial statements are issued. For that reason employers may find that continued participation in a Multiemployer Plan is not in its best interests and could provide an incentive for employers to negotiate a withdrawal from a Multiemployer Plan when the timing is right financially. This causes a "last man standing" mentality which is what the revised withdrawal liability rules in 1980 under MPPAA were designed to avoid. If financial statements treat an employer's participation in a Multiemployer Plan based on how they are designed and operated. then the only pertinent information is the employer's annual contributions to the plan and a note to the effect that if an employer would withdraw from a Multiemployer Plan, then the employer could be obliged to continue to contribute an annual amount to the plan based on past annual contributions to the plan. This would give the reader of the financial statement information that the employer would be required to maintain annual payments based on that history and not mislead the reader into thinking that the full amount of the withdrawal liability allocated to an employer needs to be recognized immediately. The withdrawal liability rules recognize that benefits are funded over the working lifetime of an employee and continues that concept in establishing the withdrawal liability obligation.

Including the total withdrawal liability amount in a note when an employer has not withdrawn or adopted a business plan that provides for a withdrawal is tantamount to requiring the financial statements to include a disclosure as to a hypothetical situation that could face a company (such as a hypothetical claim for product liability or hypothetical employment discrimination claim) which need not be disclosed in a financial statement. Why then should there be a separate rule just because an employer contributes to a Multiemployer Plan when there is no clear evidence of the employer's intent to negotiate to withdraw from the Multiemployer Plan.





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We appreciate your consideration of the points mentioned above in evaluating whether the objective of enhanced transparency by the disclosures is achieved and whether the potential for misleading information outweighs any benefit from the disclosure to a reader of the financial statement.

Respectfully submitted,

Michael Wilson

Chief Executive Officer International Foundation of

Michael Wilson

**Employee Benefit Plans** 

