STRUCTURED NETWORK SOLUTIONS

October 26, 2010

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,

Please accept and consider these comments on the Financial Accounting Standards Board's Exposure Draft on Topic 450, Disclosure of Certain Loss Contingencies.

These comments are submitted on behalf of the Minnesota contractors of the National Electrical Contractors Association (MN NECA), an alliance of four construction employer trade association of over 250 members located in Minnesota and who perform electrical construction work in Minnesota and around the country.

All the companies that are members of MN NECA are small privately held businesses, some of whom are minority- and women-owned business enterprises. All the member companies of these trade associations sponsor, contribute to and jointly administer and jointly trustee multiemployer defined benefit pension plans in the construction industry, which are the subject of the Exposure Draft proposed revision on page 30, Compensation – Retirement Benefits – Multiemployer Plans, Subsequent Measurement 715-80-35-1 and -2, and Disclosure, 715-80-50-1 and -2.

Summary

The Minnesota contractors of the National Electrical Contractors Association supports FASB's goal of maintaining high accounting standards and transparency, as well as its efforts to serve all constituents fairly. However, we believe that FASB should re-evaluate the July 20th Exposure Draft in its entirety. We agree with others, including Campaign for Quality Construction, who have commented that FASB should establish standards which avoid disclosure of prejudicial and confidential information and also take into account rational cost-benefit principles, we will direct our comments in this letter to the provisions specific to employers that contribute to multiemployer pension plans.

As written, the document has generated differing opinions among accounting and actuarial professionals on FASB's intent regarding the threshold for disclosure of withdrawal liability as a loss contingency. The Coalition believes that under no circumstances should FASB contemplate revising the current clear

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threshold from "probable or reasonably possible" to "remotely possible." The purpose of loss disclosure accounting is to ensure that users of financial statements have a clear picture of risks. A disclosure threshold of "remotely possible" is neither necessary nor reasonable, particularly in the construction industry where ERISA law has very explicit rules regarding the payment of withdrawal liability. We agree with the current FASB standard which requires disclosure of withdrawal liability in those cases where it has been incurred or is objectively known or intended to be incurred in the future.

Background
Unprecedented stock market volatility has occurred twice in the past ten years and affected even the most well funded plans. In response, Congress has passed a series of measures since 2004 that all have been aimed at restoring funding stability and requiring specific funding targets for those plans as a matter of national pension and retirement security policy. For all plans, a complicated valuation of plan assets and liabilities occurs every year, but that valuation presents only a snapshot of a single moment in time and does not take into account the long-term nature of multiemployer plans or of other factors affecting plan funding (such as fluctuating stock market returns, benefit accrual adjustments or contribution increases, which at the bargaining table can come from the bargained wage package or increased employee contributions).

Each MN NECA member company is responsible for their collectively bargained per hour contributions to those plans (which are recognized costs under Section 715-80-35-1), and for any unfunded vested benefits withdrawal liability (addressed in Section 715-80-35-2) they would incur under special withdrawal liability rules that pertain to the construction industry under the Multiemployer Pension Plan Amendments of 1980. Most construction employers contribute to multiple plans and larger companies may contribute to dozens of plans. An employer's share of withdrawal liability in any plan is based on its allocated share of the plan's unfunded vested benefits (UVBs), but federal law sets out a variety of allocation formulas that a plan can use for determining an employer's withdrawal liability.

Under the 1980 law, construction industry employers become liable for UVB withdrawal liability only if the company ceases contributing to the plan and continues to work in the geographic area of the collective bargaining agreement without contributing to the plan (or resumes covered work in the area for that plan within five years of stopping contributions). In essence, in construction withdrawal liability is triggered by the company's own objective business decision to perform work in an area (or return there within 5 years) without contributing to the plan in which they had previously participated – in effect stopping work under the bargaining agreement and stopping contributions to the pension plan and still doing that type of work in that area- - thus becoming a non-union contractor. In exceedingly rare circumstances, a mass withdrawal by other contributing employers could trigger liability; however, this is an exceedingly rare circumstance that should not drive the design of the FASB standard. Moreover, any mass withdrawal would be covered by the objective standard set out in these comments.

Comments
MN NECA employers urge FASB to revise its proposed standard to require disclosure of any liability only in a way that comports with the special legislative rules that Congress enacted for multiemployer defined benefit plans in the construction industry.

Moreover, MM NECA asserts that the Exposure Draft on its face is subject to contradictory interpretations on what the likelihood for an asserted withdrawal liability claim is to trigger the

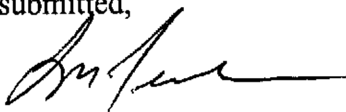
disclosure requirement – more or less "remotely possible," or "reasonably possible." As between the two, "reasonably possible" is the only plausibly workable verbal formulation; but, both fail to account for the construction industry's unique rules. In the construction industry, withdrawal liability in virtually all cases is triggered by an objectively verifiable and known fact – the audit subject's business decision to continue operations without continuing to contribute to the plan or having a present intention to do so in the future.

Any verbal standard of undefined relative terms that is less objective and instructive than that would call for speculation about remote possibilities, fail to deliver truly reliable and predictive disclosure for the benefit of users of financial statements, and present the great risk of very serious unintended consequences for the industry contrary to national pension policy.

Overall, MN NECA's position is that any standard that veers from the specific legislative rules set out for the construction industry would fail to meet the overall objective of the standard to provide clear and predictive disclosure to users of financial statements, and could well mislead rather than accurately inform users of the statements.

Conclusion
In the absence of overall reconsideration of the Exposure Draft, the Minnesota contractors of the National Electrical Contractors Association would urge FASB to adopt a construction industry specific rule on multiemployer defined benefit plan withdrawal liability that fully comports with the special rules enacted by Congress in 1980. To do less would be to raise a conflict with that Congressional policy, and further raise the specter of very serious other unintended consequences for the industry, not the least of which would be to have flawed, out-of-date and misleading information nevertheless threatening the unwarranted contraction of commercial and surety bonding credit to the great jeopardy of sponsoring employers, the plans themselves, and the industry's capacity to continue to provide benefits to employees and plan participants, loss of jobs, and services to the economy.

Respectfully submitted,



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