October 22, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1860-100
Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80)

Dear Technical Director:

The Kroger Co. ("Kroger") appreciates the opportunity to comment on the Financial Accounting Standards Board ("FASB" or "Board") Proposed Accounting Standards Update, Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80), Disclosure about an Employer’s Participation in a Multiemployer Plan (the "Multiemployer Exposure Draft").

As an initial matter, we agree that the disclosure of additional information regarding an employer’s participation in multiemployer plans is both necessary and appropriate to fully understand the financial position of a contributing employer. We also agree that the current requirement to report only annual contributions does not adequately portray the risks associated with participation in multiemployer plans. Accordingly, Kroger believes that it is important that the Board promulgate separate disclosure requirements for multiemployer plans.

Background

Kroger is one of the largest retailers in the United States, with annual sales of $76.7 billion. Kroger operates (either directly or through its subsidiaries) 2,468 supermarkets, 784 convenience stores, 372 fine jewelry stores and 40 food processing facilities. It employs over 334,000 employees, about 75% of whom are covered by collective bargaining agreements. During its most recently completed fiscal year, Kroger contributed $233 million to a total of 38 multiemployer pension plans.
Since 2005, Kroger has made disclosures in its Annual Report with respect to its participation in multiemployer plans, including an estimate of its aggregated share of the underfunding in such multiemployer plans based on ERISA funding standards. Because of the voluntary disclosures that Kroger has made over the past five years, Kroger is in a unique position of having real experience with market and investor reaction to the reporting with respect to participation in multiemployer pension plans and with the procedures required to timely collect and process this data. Kroger's comments to the Multiemployer Exposure Draft are based on its reporting experience and its experience in participating in multiemployer pension plans that are primarily in the retail food and trucking industries.

**General Comments**

While Kroger believes in the general principle of disclosure, it believes that the Multiemployer Exposure Draft needs some refinement in order to provide users of financial statements with the relevant multiemployer data without overburdening them with so much data that the most important and relevant information is obscured. The Multiemployer Exposure Draft simply requires too much information that is not particularly relevant in assessing the financial exposure of an employer that participates in one or more multiemployer plans. As currently drafted, it could have the effect of overwhelming users of financial information and make it difficult to assess the employer's risk and commitment with respect to multiemployer plans.

The Final Accounting Standards Update addressing Disclosure about an Employer's Participation in a Multiemployer Plan ("Final Update") should recognize that multiemployer plans have unique and complicated characteristics that are not readily distilled into easy reading. In addition, the nature of determining liability under multiemployer plans does not translate into comparable data between the different multiemployer plans. In order to solve this problem, Kroger believes that as much information as possible should be reported in the aggregate (or, to the extent FASB determines that aggregate reporting is not sufficient, in large groups—such as all underfunded plans in one of the regulatory zones). Kroger has found that its reporting of aggregate multiemployer funding is the optimal manner to provide transparent and useful information on the effect of its participation in multiemployer plans while not overburdening the user or providing undue weight to such disclosures. In addition, requiring too much detail or information with respect to individual plans could lead to the unintended consequence of giving competitors critical insight into an employer's current and future labor costs with respect to participation in multiemployer plans that are significantly overfunded or underfunded, effectively giving these competitors access to proprietary labor cost information.

Information required to be disclosed should be based on data that is readily available to the employer without undue expense and that does not entail speculation or conjecture on the part of the employer. Also, the information disclosed should be based
on the most recent plan year for which information is available. In most cases, this will mean that the information disclosed with respect to the employer’s participation in multiemployer plans will be as of a date that precedes the end of the employer’s reporting period by at least one year. As discussed in more detail below, the “age” of the relevant data needs to be recognized by a uniform standard footnote.

Finally, because employers will need time to establish systems and processes to collect and assimilate the information required to provide the necessary disclosures about their participation in multiemployer plans, we respectfully suggest that the effective date be delayed for at least one year for both public and non-public entities.

Specific Suggestions

For the reasons set forth in more detail below, Kroger suggests that the Board revise the Multiemployer Exposure Draft to limit the information disclosed to the following items:

1. The aggregate contributions made to all multiemployer plans for the current reporting period;

2. The projected aggregate contributions to all multiemployer plans for the next reporting period (with such projection based on the number of a plan’s contribution units for the current reporting period multiplied by the contribution rate in effect for the next reporting period under the applicable collective bargaining agreements, or in the case of an expiring collective bargaining agreement, under any funding improvement plan or rehabilitation plan that has been adopted by a multiemployer plan);

3. The employer’s estimate of its share of aggregate underfunding or overfunding (if known) for all multiemployer plans (determined for each plan by multiplying (i) the difference between the Actuarial Accrued Liability (“AAL”) and fair market value of plan assets as of the end of the most recent plan year for which information is available, and (ii) the employer’s percentage of total contributions to such plan for such period);

4. The percentage of the employer’s employees covered by all multiemployer plans at the end of the reporting period;

5. The number of plans in each regulatory warning zone (endangered or critical), the percentage of employees covered by plans in each zone and the employer’s estimate of its share of the aggregate underfunding or overfunding (if known) with respect to plans in each zone;
6. A description of specific events such as an acquisition or divestiture that could affect the employer’s future participation in, or exposure with respect to, a multiemployer plan; and

7. For individually material plans:
   a. The name of the plan;
   b. The percentage of plan contributions represented by the employer as of the end of the most recent plan year;
   c. The ratio of the plan’s active participants to inactive participants (retirees, beneficiaries and terminated vested employees);
   d. The employer’s estimated share of the plan’s underfunding or overfunding (if known);
   e. The occurrence of specific significant events such as mass withdrawal, insolvency or plan reorganization; and
   f. For material plans in a regulatory warning zone, the aggregate amount of future contribution increases (to the extent known) that are projected during the next three reporting periods with respect to such plans (as determined based on the current collective bargaining agreements and terms of adopted funding improvement or rehabilitation plans). There should be a standard uniform disclosure that following expiration of the current collective bargaining agreements the terms of such funding improvement or rehabilitation plans may result in additional future contribution increases, benefit reductions or some combination of the two.

Kroger again wishes to thank FASB for the opportunity to provide comments to the Multiemployer Exposure Draft. Kroger is supportive of your efforts to provide an appropriate level of transparency to an employer’s participation in a multiemployer plan. We believe that our suggested revisions, as noted above, would better accomplish this goal and would allow financial statement users to evaluate the impact of an employer’s risks and commitments arising from its participation in a multiemployer plan.

Response to Questions Posed by FASB

In the Multiemployer Exposure Draft, FASB asked commenters to answer seven questions. Kroger has provided its comments to certain of these questions below.
1. Do you agree that the proposed quantitative and qualitative disclosures will result in more useful and transparent reporting of an employer’s obligations arising from its participation in a multiemployer plan? Why or why not? If not, what changes would you suggest to the proposed amendments?

As stated above, Kroger strongly agrees that readers of financial statements should have information concerning the potential liabilities and future cash flow effects associated with an employer’s participation in a multiemployer plan. However, certain refinements are appropriate in order to attain FASB’s stated goal of providing useful and transparent reporting and balancing the benefit of disclosure with the cost of obtaining the desired information. In the following paragraphs, Kroger will describe its views regarding certain provisions of the Multiemployer Exposure Draft and suggest changes to those provisions as well as additions that could be of assistance to financial statement users in evaluating the impact of an employer’s participation in a multiemployer plan.

Disclosure Should Only Be Required of Known or Obtainable Information

The Final Update should state specifically that the disclosure is based on data in the possession of the employer or readily obtainable at reasonable expense.

Under the Pension Protection Act of 2006 ("PPA"), multiemployer plans are required to provide contributing employers with certain documents, including periodic financial statements, actuarial valuations and any funding improvement or rehabilitation plan filed with the annual report. Such information can be requested once a year. Contributing employers are also entitled to request an estimate of withdrawal liability once every 12 months. The multiemployer plan may charge a reasonable fee for producing these documents and preparing an estimate of an employer’s withdrawal liability — information necessary to comply with the Multiemployer Exposure Draft. While the plan can only charge the cost of copying documents that must be disclosed (such as financial statements and actuarial reports), employers requesting estimates of withdrawal liability are charged with the cost of preparing such estimates, which can be substantial. More importantly, while the failure to furnish the required documents and withdrawal liability estimate can subject the multiemployer plan to fines from the Department of Labor, the contributing employer does not have a private right of action to compel any particular multiemployer plan to furnish the required documents or withdrawal liability estimate. An employer cannot be required to report what it cannot obtain. FASB should reinforce this point with a positive statement in the Final Update that an employer is only required to disclose that information that it possesses or can reasonably obtain at reasonable expense.

Disclosure Should Be Based On Information Obtainable From Plan Financial Statements and Actuarial Reports
The Final Update should base disclosures on information that can be derived from plan financial statements, actuarial reports and any funding improvement or rehabilitation plan that has been adopted by the plan. Much of the information that would be required to be disclosed under the Multiemployer Exposure Draft is not currently found in any document produced by the plan. For example, the plan does not account for retirees or beneficiaries by contributing employer. Retirees in multiemployer plans could accrue benefits with multiple participating employers, and requiring disclosure of such information would require a considerable expenditure by multiemployer plans without providing any material information to users of financial statements. If the Final Update bases all required disclosures on information derived from plan financial statements, actuarial reports or the adopted funding improvement or rehabilitation plan, the required disclosures would be workable, in that they would be based on documents that already exist and that the plan is legally obligated to provide to contributing employers at reasonable cost. Thus, for example, the AAL of a plan and the fair market value of plan assets can both be found in existing documents that the plan is required to disclose.

Disclosure Should Be Based Upon Plan Year Data

While the employer can report contributions for the relevant reporting period, the Final Update should require clarification that disclosures involving specific plan information should be based on the most recent plan year for which data is available. In almost every case, this will mean that data regarding the plan is at least one-year old. Accordingly, there should be a uniform standard footnote stating that disclosures involving specific plan information are at least one year old and may not reflect current conditions. Such a standard disclosure will help explain the relevancy of the data to financial statement users unfamiliar with the operations of a multiemployer plan.

In requiring these disclosures, FASB should set an outer limit for the reporting of information from a prior period because the nature of multiemployer plans allows for dramatic changes in funding, participation, proportionate share of liabilities and financial condition from year to year. Because of this volatility, the more time that passes the less useful the information will be to financial statement users. In our opinion, any disclosure should be based on data that is no more than twenty-one months older than the end of the reporting period (e.g., for reporting period ended December 31, 2011, data would be no older than March 31, 2010). This should provide sufficient time for employers to secure relevant data, while at the same time providing data that still provides some indication of the employer’s current risk and commitment to the plan. To the extent that timely data can not be obtained at reasonable expense, the Final Update should provide that the employer would not be deemed to be in the possession of required information with respect to such plan by virtue of its possession of “stale” data.

Disclosure Should Include a Uniform Standard Description of Risks
By definition, multiemployer pension plans are pooled arrangements to which more than one employer contributes. A key feature of multiemployer pension plans is that when an employer withdraws from the plan, it is liable for its share of the plan’s unfunded vested benefits. If a withdrawing employer fails to pay the amount assessed by the plan, liability for the unpaid amount is effectively shifted to the remaining contributing employers. The Final Update should include a uniform standard footnote describing the risks of multiemployer plan participation, so as not to foster differing disclosures regarding the risk of participation that could confuse readers of financial statements.

Disclosure Should Limit the Amount of Individually Identifiable Data With Respect to Individually Material Plans

While Kroger appreciates the need to disclose information about plans that are individually material, the Multiemployer Exposure Draft requires disclosure of detailed proprietary data that could be used by competitors to assess labor costs and trends in particular geographic markets or particular market segments. For example, the Multiemployer Exposure Draft requires a description of the employer’s current arrangements with respect to individually material plans and the agreed-upon basis for determining contributions to the plan. It also requires quantitative information about the employer’s participation in the plan, such as the number of employees covered by such plan. Such information is considered proprietary and is not currently disclosed. Because information about a particular plan could reveal labor costs and trends in a particular market or segment, disclosure could provide competitors with an unfair advantage. At the same time, such information is not particularly relevant to a user of a financial statement. Relevant information about the employer’s risk and commitment with respect to a plan can be ascertained from information regarding the employer’s contributions to the plan (as a percentage of all plan contributions) and the employer’s share of the aggregate underfunding or overfunding.

Disclosure Should Include Appropriate Guidance on Materiality

The Final Update should provide some guidance for determining when a plan is individually material (e.g., percentage of plan contributions contributed by the employer, potential liability to plan in terms of employer net worth, etc.). As some employers contribute to upwards of 50 – 100 multiemployer plans, absent some guidance (and limits) on plans that are deemed material, the required disclosures for employers participating in a significant number of multiemployer plans could dominate the financial reporting in terms of pages alone, which could have a substantial effect on how investors view the employer’s multiemployer disclosures.

Disclosure Should Only Be Based On Aggregate Information
Disclosure should be based primarily on aggregated information with respect to an employer’s participation in multiemployer plans. Requiring voluminous details about individual plans could lead to a financial statement user giving greater weight than due to multiemployer disclosures and ultimately mislead the user about the risks and commitments of the employer’s participation in multiemployer plans.

**Disclosure Should Standardize the Reporting of Future Contributions**

The Multiemployer Exposure Draft requires disclosure of expected contributions for the next reporting period and known trends in contributions, including the extent to which a surplus or deficit in the plan may affect future contributions. These disclosures are to be reported on a disaggregated basis in accordance with 715-80-50-1 and 1A. We are concerned that this disclosure is not helpful because it may be duplicative of quantitative information required in other subparts of 715-80-50-1B and may present a distorted view of the overall contribution requirement if the user does not take the time to sum each of the disclosures. Moreover, as discussed above, disaggregated reporting could result in the disclosure of proprietary labor information. As such, we believe that expected contributions for the next reporting period should be required only on an aggregate basis.

In addition, in disclosing expected contributions for the next reporting period, employers should not be asked to project business activity for a future period as this goes beyond the scope of the normal requirements of financial reporting, represents an unreasonable expectation of financial statements and indirectly requires forward looking estimates. Instead, absent a significant event affecting comparability between reporting periods (such as an acquisition or divestiture), estimates of future contribution obligations should be based on (i) the contribution rate in effect for next reporting period under the applicable collective bargaining agreement (or in the case of an expiring collective bargaining agreement, under any funding improvement plan or rehabilitation plan), and (ii) the number of employees and hours worked for the current reporting period (or other units by which contributions to the plan are measured).

**Disclosure With Respect To Plans In The Regulatory Warning Zones Should Not Require Speculation**

For multiemployer plans in the regulatory warning zones, the Multiemployer Exposure Draft requires the employer to disclose any warning status and remedies being considered by the multiemployer plan. Employers should not be asked to speculate what action a plan might take. This is true regardless of whether the employer has appointment power with respect to a plan trustee. If the employer has appointed a trustee, remedies being considered by the trustees (but which are not generally known by all employers through an official plan communication) could not be disclosed without potentially triggering a breach of the trustee’s fiduciary duty under applicable law. Accordingly, for plans in regulatory warning zones, disclosure should be limited to those
remedies contained in the funding improvement or rehabilitation plan that has been adopted and communicated to the employer or information that is actually known to the employer as a result of a formal pronouncement by the plan.

**Disclosure With Respect to Individually Material Plans Should Not Include the Relative Participation of Employees or Retirees**

The Multiemployer Exposure Draft requires that employers report the percentage of their employees covered by individually material multiemployer plans. The Multiemployer Exposure Draft also requires additional qualitative information about the employer’s active and retired multiemployer plan participants. These disclosures are not likely to provide financial statement users with data that can help them assess the employer’s risk and commitments with respect to individually material multiemployer plans.

First, information about the number of employees is not as relevant as the employer’s contributions to the plan when expressed as a percentage of all plan contributions. In measuring risk and commitments to a multiemployer plan, it does not matter whether 1% or 100% of the employer’s employees are covered by the plan. Rather, the employer’s risk of participation is assessed by understanding the relative amount of annual contributions vis-à-vis other contributing employers. For example, if an employer had all of its 100 employees participating in a multiemployer plan that had over 10,000 active participants, the employer’s risk of participation in the plan is relatively small. In contrast, if an employer with a total of 100,000 employees has 9,000 employees covered by the same plan, the employer’s participation in the plan would be significant, even though it only represents 9% of the employer’s employees, as this employer would comprise the 90% of the plan’s active participants and the risk and commitment of the employer with respect to the plan would be substantial. Moreover, the percentage of employees covered by multiemployer plans could be misleading because there could be significant differences in contribution rates among groups of employees. Because of these issues, disclosure of the employer’s percentage of plan contributions for individual material plans is a more appropriate indicator of the employer’s exposure with respect to such multiemployer plan and can be derived from information in the possession of the employer and plan financial statements and/or actuarial reports.

Second, to the extent that a significant percentage of the employees of the employer are covered by a multiemployer plan, the employer’s multiemployer plan exposure will be reflected in the disclosures regarding the aggregate multiemployer plan contributions and the employer’s share of the aggregate underfunding or overfunding.

Third, information about the number of retirees of the employer is not particularly relevant and could be difficult to obtain. It would be more useful and more relevant to require disclosure of the number of active and inactive participants in the plan as of the
most recent date for which such data is readily available. Such data more accurately reflects the potential impact of events affecting the plan (such as a significant deviation between actual investment earnings and the plan’s assumed rate of investment return).

To the extent that the Final Update requires information on the number and percentage of employees covered by multiemployer plans, Kroger suggests that such information should be based on employees covered as of the last day of the most recent plan year for which data is available and that the required reporting be based on aggregate data.

Disclosure Should Be Based on a Uniform Risk Standard

Lastly, the Multiemployer Exposure Draft essentially uses withdrawal liability as a measure of the employer’s risk and commitment with respect to participation in multiemployer plans. However, for a variety of reasons, withdrawal liability is not the best measure of the employer’s risk and commitment. Moreover, the determination of withdrawal liability depends on many factors normally unavailable to an employer.

Kroger believes that a better estimate of the employer’s future obligations would be the employer’s aggregate “share” of the underfunding or overfunding in all multiemployer plans in which the employer participates. For this purpose, the employer’s share of the underfunding or overfunding for a particular plan could be derived by the product of: (1) the difference between the plan’s AAL and the fair market value of plan assets, and (2) the employer’s percentage share of total plan contributions. With this data, the financial statement user can gauge the funding level of the multiemployer plan and the likely effect on the employer’s future contribution obligation with respect to the plan. This information would provide the necessary transparency to the user as to the impact of the employer’s participation in the multiemployer plan. In contrast, withdrawal liability alone may not accurately reflect the employer’s exposure to risk and future commitments for several reasons.

First, withdrawal liability is not a good proxy for future contribution requirements. Calculation of withdrawal liability may be based on actuarial assumptions that are different from the funding assumptions on which plan contributions are ultimately determined. For example, the interest rate assumption chosen by the multiemployer plan to calculate withdrawal liability is often different than the assumption used for funding purposes. This fact alone can significantly affect the existence and magnitude of withdrawal liability.

Second, the estimated amount of withdrawal liability may be misleading as to the actual amount owed if the employer withdraws. While an employer can be assessed withdrawal liability upon termination of its participation in a multiemployer plan, the employer’s true obligation to the plan may be substantially different that the amount of the assessed withdrawal liability due to a variety of rules, including those particular to
certain industries, that can limit or eliminate the amount of withdrawal liability to be paid to a multiemployer plan. For example, the employer’s annual payment amount following withdrawal is determined based on an average amount contributed to the plan over the past ten years. These annual payments are subject to a twenty-year cap, after which the employer no longer has to pay even if the withdrawal liability has not been fully amortized. To the extent that the employer’s obligation is limited by the 20-year cap, its obligation to the plan will be less (in some cases substantially less) than the amount of assessed withdrawal liability. Thus, the estimate of withdrawal liability is not necessarily indicative of the employer’s future obligation to a multiemployer plan.

Third, the only way to adequately estimate withdrawal liability is to request an estimate from the multiemployer plan. While the PPA requires that a multiemployer plan furnish the contributing employer with notice of the estimated amount of withdrawal liability, Section 101(l)(3) of ERISA allows the multiemployer plan to “make a reasonable charge ... of furnishing [the estimate].” Many multiemployer plans have interpreted this provision as allowing the plan to charge the cost of having the plan actuary prepare the withdrawal liability estimate and have charged employers thousands of dollars for the required disclosure. Moreover, the plan has at least six months to provide this notice and the employer is not entitled to receive more than one notice of potential withdrawal liability during any twelve-month period. As a result, the withdrawal liability estimate could be for a period that precedes the reporting period by as much as two years. In addition, by basing disclosure on withdrawal liability estimates, FASB is effectively requiring that the employer use its one opportunity to obtain this information for financial reporting purposes.

If FASB decides to retain the disclosure requirement regarding withdrawal liability, then there should be a uniform standard footnote indicating that (i) withdrawal liability reflects the maximum obligation that the employer would incur if it withdrew during the plan year, (ii) the estimate is based on the condition of the plan year as of the end of the year preceding the date of withdrawal, and (iii) statutory rules may limit or eliminate the amount of withdrawal liability that the employer would be required to pay. Such a standard disclosure would assist users in assessing this particular information.

2. Do you believe that disclosing the estimated amount of withdrawal liability, even when withdrawal is not at least reasonably possible, will provide users of financial statements with decision-useful information? Why or why not?

No, absent a probable withdrawal, the disclosure of withdrawal liability is not meaningful and is not reflective of the employer’s likely future obligations to the plan. As stated above, a better estimate of the employer’s future obligations could be derived from disclosing the employer’s share of the plan’s underfunding or overfunding.

To the extent disclosure of withdrawal liability is appropriate (because of a probable withdrawal), the employer should also disclose any limitations that could affect
(reduce) the amount that the employer is required to pay, such as the 20-year cap, de minimis rule, 5-year free look, and special industry rules. We would further recommend that, to the extent that such limitations reduce the employer's potential exposure, the exposure should be disclosed as a present value using a consistent interest rate (such as the AA corporate rate, segmented on the basis of a yield curve).

Kroger does agree that to the extent an employer has taken action indicating a probable complete or partial withdrawal, the possibility of the employer being assessed withdrawal liability should be disclosed.

3. **What implementation costs, if any, will an employer face in applying the proposed disclosures? Are these costs significantly different when applying the proposed disclosure requirements to foreign plans?**

Complying with these disclosure rules could entail significant costs for both public and private employers alike. An employer may face several implementation costs in applying the proposed disclosures. These implementation costs may include increased auditor fees to prepare the necessary disclosures, increased administrative fees due to the multiemployer plan as it collects and reports the required data and charges for withdrawal liability estimates. These costs could be minimized to the extent that the required disclosures are based on existing documents (e.g., plan financial statements and actuarial reports) that are obtainable at a reasonable cost.

4. **The Board plans to require that the amendments in the final Update be effective for public entities for fiscal years ending after December 15, 2010. Are there significant operational issues that the Board should consider in determining the appropriate effective date for the final amendments?**

There are significant operational issues that the Board should consider in determining the appropriate effective date for the final amendment, as a large part of the required data resides with the multiemployer plans. Many of these multiemployer plans are not currently capable of collecting and providing the required information to each participating employer. In addition, participating employers may not have collected (or have systems in place to collect) all of the information and data to make the required disclosures. Employers will need additional time to obtain this capability. Therefore, Kroger believes implementation should be delayed one year (until fiscal years ending after December 15, 2011 for entities other than non-public entities and until fiscal years ending after December 15, 2012 for non-public entities). Such a delay would give employers adequate time to establish systems to collect and report the required information. If disclosures are required for 2010, the disclosures should be limited to basic information readily obtainable by the employer. In addition, FASB would need to provide timely clarifications on the issues raised by this and other comment letters.
Please contact me if you have any questions or require additional information about our comments to the Multiemployer Exposure Draft.

Sincerely,

J. Michael Schlotman,
Senior Vice President and
Chief Financial Officer