October 25, 2010

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

Re: File Reference No. 1860-100
    Proposed Accounting Standards Update -
    Compensation - Retirement Benefits - Multiemployer
    Plans (Subtopic 715-80)
    Disclosure about an Employer's Participation in a Multiemployer Plan

Dear Mr. Golden,

We are pleased to comment on the proposed Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU), Disclosure about an Employer's Participation in a Multiemployer Plan. We support the Board's objective to enhance the quality and consistency of information provided in financial statement disclosures, and appreciate that the proposed ASU was developed in response to constituents commenting on the perceived lack of transparency about an employer's participation in a multiemployer plan.

As CPAs, the partners of Legacy Professionals LLP have provided accounting and auditing services to a large number of multiemployer plans for the past several decades. Currently, we provide service to over 350 employee benefit plans (of which the overwhelming majority are multiemployer) including pension plans, health and welfare plans, apprenticeship funds, and others with plan assets that range from $250,000 to $6.8 billion. As stakeholders in this industry, we are writing on behalf of our firm and our clients to express significant concerns with certain aspects of the proposed ASU.
The following are our responses to certain questions posed by the Board:

**Question 1: Do you agree that the proposed quantitative and qualitative disclosures will result in a more useful and transparent disclosure of an employer's obligations arising from its participation in a multiemployer plan?**

We believe that although many of the enhanced disclosures will increase transparency regarding an employer's risks and commitments arising from its participation in a multiemployer plan, we are concerned that certain of the proposed disclosures would provide untimely and inconsistent information that would distort a financial statement user's judgment regarding an entity's financial position.

In particular, the employer's disclosure of the total assets and accumulated benefit obligations of the plan would most likely be obtained from the most recent audited financial statements of the plan. In the majority of cases, the multiemployer plan audits are not completed until well into the following year, consequently forcing the employer to use the prior year plan asset information.

One of the primary reasons that a multiemployer plan's financial statements are typically not released until late the following year is that a key piece of financial information, the actuarial valuation, is more often than not unavailable until many months into the year. Schedule MB is also prepared by the actuary and is an essential part of the plan's Form 5500, *Annual Return/Report of Employee Benefit Plan*, as required by the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under Employee Retirement Income Security Act of 1974 (ERISA). Form 5500 must be filed with final extension no later than 9 ½ months after year end. In our experience, Schedule MB is many times not available until near the filing deadline. The audited financial statements of the plan are attached to the plan's Form 5500.

More importantly, a pension plan's audited financial statements typically include only the **beginning of year** information regarding the accumulated benefit obligations of the plan, as permitted under generally accepted accounting principles. Therefore, the employer would only have two year old information available for this aspect of its financial statement disclosure, which may confuse users and interfere with their ability to make decisions about the employer's net obligations.

The multiemployer pension plan's actuary does review and certify the plan's status within 90 days of plan year end, as newly required under the Pension Protection Act of 2006 (PPA). However, that calculation is based upon unaudited asset information. Additionally, the employer, particularly if a public company filer, may be required to prepare its financial statements well in advance of that 90 day timeframe.
Question 2: Do you believe that disclosing the estimated amount of the withdrawal liability, even when withdrawal is not at least reasonably possible, will provide users of financial statements with decision-useful information?

The proposed ASU includes a requirement that the employer disclose the amount that is required to be paid on withdrawal from the plan as of the most recent date available, if that information is available. We understand that the withdrawal liability is being proposed as a proxy for an employer's share of the funded status of the plan. However, we do not believe that the use of this estimated amount will provide clear information to users, in a consistent and comparable fashion. Consider the following:

- The use of the withdrawal liability concept presents quite a few challenges, especially in its application to retiree health benefit obligations. Because the principles of employer withdrawal liability were brought about by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), they were never specifically applied to employers contributing to a health and welfare plan offering postretirement benefits. Withdrawals from such health and welfare plans would create greatly varying consequences with no prescribed formulas. Therefore, the withdrawal liability concept would not serve well as a proxy calculation for the employer's current obligation to fund those types of future benefits.

- For multiemployer pension plans, we find the use of the withdrawal liability calculation to represent the employer's share of the plan's funded status to be problematic for several reasons. The basic rules of employer withdrawal liability require payments to continue to a plan after an employer withdraws from that plan, in order to help complete funding the plan's liability for vested benefits. Withdrawal occurs when the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute.

Determining the withdrawal liability amount is the responsibility of the plan, and is based on an allocation of the plan's unfunded vested benefits as of the end of the plan year preceding the withdrawal. The allocation itself is derived upon a specific statutory formula, based on when the employer started participating in the plan, although several alternative formulas are allowed. Furthermore, PPA provides that withdrawal liability should be determined without consideration of benefit reductions or surcharges charged to employers when a plan goes into critical status.
MPPAA created special withdrawal liability rules, however, for certain industries such as construction and entertainment. Furthermore, the Pension Benefit Guaranty Corporation (PBGC) is authorized and has approved adoption of similar special rules to individual plans. Other special provisions of MPPAA include the free look provision granted to plans meeting certain requirements, which allows a new employer to come into the plan for up to five years with no potential for withdrawal liability, and the de minimis rule which requires that small amounts ($50,000 to $100,000) of withdrawal liability be overlooked. Additionally, PPA allows all plans to get a "fresh start" by restarting their withdrawal liability calculations as of a year in which the plan had no unfunded vested benefits. These special rules impair the comparability of the information in financial statements regarding the employer's share of the plan's funded status, because such information would be based upon a wide variety of assumptions and rules.

- Another problematic aspect of using a withdrawal liability calculation is the speculative nature of the assumptions used in determining such amounts. As defined, a withdrawal occurs when an employer has ceased operations, many times upon the insolvency liquidation of an employer. Assuming such circumstances, one-half of the withdrawal liability is contingent on whether there is sufficient liquidation or dissolution value to pay it, after the employer's other debts have been paid. Furthermore, an employer may take up to 20 years to pay the entire withdrawal liability. An employer may or may not include such assumptions in its calculations, again skewing the comparability of this information.

**Question 3: What implementation costs, if any, will an employer face in applying the proposed disclosures?**

The provisions of MPPAA state that it is the responsibility of the plan's trustees to determine the amount of an employer's withdrawal liability, although a plan can charge employers for the cost of furnishing the information.

Having an enrolled actuary calculate each employer's allocation of a plan's funded status, even if using a withdrawal liability amount as a proxy calculation, would be costly to many small and mid-sized employers at a time when they are already struggling to survive economic downturns. Multiemployer plans are often the only way, due to their central administration and pooling of resources, that small employers can provide comprehensive benefit packages to their employees in a cost effective manner. Furthermore, if plans were not able to recoup these expenses, any funding deficiency positions would be further exacerbated.

Another unforeseen consequence of implementing this proposal would be the administrative burden to the plan itself. In order to calculate each employer's share of the funded status on an annual basis, the enrolled actuary would need to request a significant amount of data and reports from the plan. This would create a strain on the plan's administrative employees and diminish their ability to service plan participants.
The combination of these concerns leads us to recommend that the FASB remove the requirement to disclose the amount of total assets and accumulated benefit obligations of the plan and also eliminate the disclosure of the amount that is required to be paid on withdrawal from the plan.

We recommend that instead of including untimely information about the assets and obligations of the plan, the users be informed that the plan's most recent Form 5500 with audited financial statements attached, can be found at the DOL's website, http://www.efast.dol.gov/.

We further propose that instead of inconsistent, speculative and costly withdrawal liability calculations, the FASB's objective of providing clear and useful disclosures would be fulfilled by including the most recent quantitative information about the plan's funded status along with quantitative information about the employer's participation level in the plan.

The disclosures could also include a description about events that may cause a withdrawal from the plan and that the ultimate amount of withdrawal liability is dependent upon several factors (as described above). It would be appropriate to also convey to the user that the funded status of the plan depends largely on the fair value of the plan's investment securities and certain assumptions pertaining to interest rates, inflation rates and employee demographics, all subject to change, and that such changes could materially affect the plan's funded status at any given point in time.

Legacy Professionals appreciates the FASB’s consideration of these comments and recommendations. Please feel free to contact Robert Tiberi, Managing Partner, if you have any questions.

Sincerely,

[Signature]

Legacy Professionals LLP