August 30, 2010

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

Re: File Reference No. 1840-100 – Proposed Accounting Standards Update—Disclosure of Certain Loss Contingencies, an amendment of Contingencies (Topic 450)

Dear Mr. Golden:

Nationwide Insurance appreciates the opportunity to comment on the Exposure Draft of the Proposed Accounting Standards Update, Disclosure of Certain Loss Contingencies, an amendment of Contingencies Topic 450 (Exposure Draft or Proposed Standard). The Nationwide Insurance Enterprise (Nationwide) is comprised of three affiliated mutual insurance companies and their subsidiaries under common management. Nationwide is one of the largest diversified insurance and financial services organizations in the world with 2009 annual revenues of $21 billion and assets totaling $140 billion.

Nationwide appreciates that the Board has listened to the many concerns expressed by Nationwide and others during the last exposure period and has released an Exposure Draft that takes a step in a more agreeable direction. However, Nationwide remains concerned that many of the disclosures are likely to be misleading and may present a distorted view of a company’s true financial position. Specifically, Nationwide continues to object to the disclosure of remote contingencies, the amount of plaintiffs’ claims, and possible insurance recoveries. Furthermore, while the Board has made great strides in reducing prejudicial disclosures or disclosures that could result in a waiver of attorney-client privilege, Nationwide will point out instances which remain concerning within our comment letter.

Nationwide believes that the existing guidance properly focuses on relevant information for disclosure that is meaningful to financial statement users. In contrast, the Proposed Standard requires additional voluminous disclosure of less meaningful information that could cloud the ability of financial statement users to decipher financial risk. This will likely diminish the importance of the contingency footnote and could cause greater confusion rather than increase transparency. Compliance with the Proposed Standard is also burdensome due to the amount of litigation many preparers face. For example, insurance companies often have thousands of active cases, many of which are frivolous. Nonetheless, preparers would be required to create exhaustive disclosures for items with limited value for financial statement users.

COMPREHENSIVE RECOMMENDATIONS
**TABULAR RECONCILIATION and PROBABLE CONTINGENCIES**

The Proposed Standard requires public companies to "perform a tabular reconciliation," which includes disclosure of accruals, changes in accruals and settlements paid as well as the disclosure of amounts accrued for probable contingencies. Nationwide is concerned with the legal precedent a requirement of this nature could establish. Requiring public disclosure of accruals could provide plaintiffs’ counsel with the exact amount the company has put aside to pay particular litigation helping a plaintiffs’ counsel determine the value of a case they are currently pursuing. A careful tracking of the periodic changes in the tabular reconciliation aggregation can give prejudicial information to the plaintiffs. For example, if the aggregated loss reserve at the end of the second quarter is $25 million and the aggregated loss at the end of the third quarter is $35 million, the plaintiff’s counsel in one class action could conclude, potentially incorrectly, that the court's denial of the company's motion for summary judgment has caused the company to add $10 million to its loss reserve. That information, in turn, will provide the plaintiff’s attorney with an advantage in settlement negotiations as it will use this data, whether accurate or not, as a floor in the negotiation process. Furthermore, careful tracking of the pattern of settlements can provide future plaintiffs’ with the incentive to pursue a similar case in hopes of receiving a similar settlement. This creates a more litigious environment at the detriment of the reporting entity which will be forced to spend money to defend or settle these claims.

Additionally, the requirement that the company disclose the amounts accrued will require disclosure of Attorney Work Product and could result in a waiver of the attorney-client privilege. Furthermore, the requirement to disclose settlement amounts could be prohibited if the settlement agreement contains a confidentiality provision.

Nationwide is concerned that tabular reconciliation information could be easily misused for predicting future trends and cash flows of the entity. Aggregating unique liabilities does not provide a historic pattern that would be a reliable glimpse into the future when new contingencies arise because they lack homogeneity and a comparable basis. This point is especially true for litigation contingencies, where each case presents a unique fact pattern that cannot be used to draw correlations to other cases, which a user of the financial statements may try to infer based on the tabular reconciliation.

**OTHER QUANTITATIVE DISCLOSURE**

The Board has proposed that entities disclose the amount claimed by the plaintiff or the amount of damages indicated by the testimony of expert witnesses. Nationwide is concerned that the proper disclosure of these quantitative amounts will not be clear. To highlight our concerns, we provide three scenarios describing common practices. First, in more complex cases, it is often rare that a dollar amount is set out in the case. A more common damage request is, “compensatory damages in an amount to be proven at trial and such other relief as the court deems just and proper.” Second, in many jurisdictions, this information is not set out in a complaint and thus is not publicly available in the early stages of a contingency’s life cycle for disclosure. Third, often many defendants are listed for a particular claim for both related and unaffiliated entities. In these circumstances, disclosure of the full claim amount by any one party could be potentially misleading. However, allocation across defendants would have no legal basis.

Even in a simplistic scenario where the reporting entity is the only defendant and an amount is specifically claimed, it is misleading to disclose this amount claimed. These amounts do not bear a relationship to the company’s ultimate loss, if any, and are often speculative and far reaching. To disclose these amounts could lead users to believe the company may actually have to pay these amounts, which typically does not happen. Also, in practice, the plaintiff witnesses and the defendant
witnesses will provide diametrically opposing opinions on damage amounts that are not meaningful to the financial statement user.

**EXPECTED INSURANCE RECOVERIES**
The language in Topic 450 addresses the disclosure of gain contingencies by stating, “Care shall be exercised to avoid misleading implications as to the likelihood of realization.” The Proposed Standard requires the disclosure of “possible recoveries from insurance and other sources only if, and to the extent that it has been provided to the plaintiff(s) in a litigation contingency, it is discoverable by either the plaintiff or a regulatory agency, or it relates to a recognized receivable for such recoveries”. Requiring disclosure of insurance recoveries under this threshold may mislead investors into thinking the likelihood of realization is close to certain, which is contradictory to the language currently in Topic 450.

From a litigation perspective, insurance carriers typically will not have moved beyond a reservation of rights letter until the litigation is substantively resolved. Disclosing the amount would imply confirmation of coverage, which may not be the case. At times, Nationwide has to negotiate or possibly arbitrate with insurers to obtain coverage. Nationwide suggests, at most, the disclosure be limited to a statement that there is a policy that might be available for any loss. Additionally, disclosure of an expected recovery in cases where the company is denying liability creates a contradictory statement and is therefore misleading to financial statement users.

Furthermore, the requirement to disclose this information if it is discoverable by the plaintiff or a regulatory agency is potentially prejudicial. In practice, insurance arrangements are generally considered discoverable; however, they are not usually requested by the plaintiff in the discovery process. Having to disclose this information solely because it is potentially discoverable, even if it has not been specifically requested by the plaintiff, would provide valuable information to the plaintiff’s counsel, who can then use the company’s expected recovery as a floor in attempting to negotiate a litigation settlement.

**QUALITATIVE DISCLOSURE**
The quantitative disclosures only require that publicly available information be disclosed. Nationwide believes this principle should be added to the qualitative disclosure section as well.

Additionally, in the early stages of a contingency’s life cycle, the Proposed Standard requires that entities disclose the basis for the claim and the basis for the entity’s defense or a statement that the entity has not yet formulated its defense. The basis of defense can be very complicated and the explanation can get lengthy. The sample disclosure provided in the Exposure Draft is a very simple case and would not be a good comparison for more complex cases which are much more typical in lawsuits filed against insurers and financial services providers, as well as other industries. If a reader needed this complex information, detailed information required for individually material contingencies will enable financial statement users to find case information, including briefs that will include detailed descriptions of the company’s defenses. At a minimum, as noted in the preceding paragraph, disclosure of defenses should not be required until publicly available. Providing this information in the footnotes sooner could be prejudicial to companies and perhaps prohibited if settlement discussions are in process and the parties have agreed to confidentiality provisions.

Additionally, for *individually material* contingencies, the Exposure Draft lists, as an example, that an entity should disclose the current status of the litigation contingency. Again, it is unclear as to the
extent of detail this disclosure requires. Nationwide does not object to this disclosure if the Board’s intent is a disclosure such as “in discovery”. If this is meant to be more detailed than this, such as, including information about private settlement negotiations then this information could be prejudicial.

Lastly, the Proposed Standard also requires that other publicly available information be disclosed for contingencies that are considered *individually material* to allow financial statement users to obtain additional information. If this information is disclosed for a particular case in order to direct the reader to more detailed case information or otherwise, the financial statement user may incorrectly infer that the case is individually material. Today, Nationwide discloses this information for many cases, even if not individually material. If a plaintiff would begin to infer that Nationwide deems these cases to be material and in turn will more aggressively pursue the case, this could be prejudicial. For this reason, Nationwide suggests this disclosure requirement read, “This information may be disclosed for additional contingencies regardless of materiality if management so chooses.”

**REMOTE CONTINGENCIES**

Nationwide does not feel the threshold for disclosure needs to be lowered to include remote contingencies. Statement of Financial Accounting Concepts No. 2, *Qualitative Characteristics of Accounting Information* states in paragraph 95, “if two amounts are not equally likely, conservatism does not necessarily dictate using the more pessimistic amount rather than the more likely one.” To analogize to the disclosure of loss contingencies, the Proposed Standard suggests a threshold of remote loss contingencies *with a potentially severe impact*. If required to disclose these amounts, the entity would be asked to be overly conservative and disclose the less likely scenario. This disclosure is misleading to financial statement users, as it presents a distorted view of an entity’s liquidity, working capital, and financial position. As a result, financial statement users cannot distinguish between those items that are likely to occur and those that are not likely to materialize and may make faulty financial decisions.

Additionally, Nationwide is concerned that the disclosure of remote contingencies could become harmful to a company. The disclosure of remote contingencies could result in an increase in the volume of claims made against a company (i.e., “copy-cat” claims). We fear that the possibility these disclosures could fuel a more litigious environment is an unintended consequence of this Proposed Standard. This will be at the detriment of the reporting entity which will be forced to spend money to defend or settle these claims.

Furthermore, Nationwide is concerned with the factors outlined in the Exposure Draft to guide the determination of when remote contingencies must be disclosed. The definition of severe emphasizes financially disruptive events; however, the factors listed in the Exposure Draft include non-financial considerations such as the potential effect on operations and the amount of resources to resolve the contingency. The cost of defense is irrelevant to whether or not a contingency may be financially severe. The company may choose to defend a claim out of principle or to set precedent, even if the actual claim lacks merit. Nationwide feels the definition of severe impact alone is sufficient and management can use this definition to guide their judgment regarding disclosure.

**AGGREGATION CRITERIA**

Within the Exposure Draft 450-20-55-1d, the Board has suggested if there are a large number of similar claims, an entity should consider disclosing the activity (for example, in a rollforward) of the total number of claims outstanding, average amount claimed, and average settlement amount.
Nationwide is concerned that the average amount claimed and number of claims outstanding could be inflated by frivolous lawsuits and are irrelevant to actual risk of loss. Additionally, the disclosure of average settlement amounts that are immaterial could increase the volume of claims made against a company for similar reasons (i.e., copy-cat claims). Nationwide recommends eliminating this suggested rollforward.

**CONCLUSION**

In its efforts to provide investors with more information, the Proposed Standard overreaches. Nationwide believes that this will result in disclosure of excessive, unreliable, prejudicial, and potentially misleading information. Investors will be inundated with information about remote contingencies and unrealistic claim amounts, will have a skewed perception of a company’s exposure and could potentially make investment decisions based on this misleading picture. Furthermore, the disclosure of prejudicial information that could result from the Proposed Standard would cause unintended financial harm to reporting entities, and ultimately, the investment community.

Nationwide hopes these comments assist the Board during its redeliberations of the Proposed Standard. In the event that any Board or FASB staff member would like any further clarification of our positions, Nationwide would be happy to explain them in greater detail.

Respectfully,

James D. Beshar
Senior Vice President, Enterprise Controller and Chief Accounting Officer
Nationwide Insurance