November 1, 2010

Technical Director
File Reference No. 1860-100
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 0856-5116

Re: Disclosure about an Employer’s Participation in a Multiemployer Plan

Dear Sir or Madam:

The AFL-CIO submits these comments on the Exposure Draft on the Disclosure about an Employer’s Participation in a Multiemployer Plan, issued on September 1, 2010 (“Exposure Draft”). The AFL-CIO and its 57 affiliates, together with Working America, its community affiliate, represent more than 12 million workers across the country. Of the 10 million workers covered by multiemployer pension plans, the majority are represented by affiliates of the AFL-CIO.

The Exposure Draft proposes a significant expansion of the information that companies contributing to multiemployer plans would be required to disclose. The AFL-CIO believes that in requiring such disclosure, FASB should not treat employer obligations to multiemployer plans differently than any other obligations to third-party benefit providers. Within the broad subject of multiemployer plans, withdrawal liability, as we discuss below, is a contingent liability. As such the disclosures associated with withdrawal liability should be addressed in the same manner as any other contingency.¹

¹ FASB has separately issued an exposure draft on the Disclosure of Certain Loss Contingencies that also affects the disclosure treatment of potential withdrawal liability associated with multiemployer plans. We urge FASB to consider the accounting issues associated with multiemployer plans in light of the comments to this.
The consequences of FASB adopting a punitive double standard with respect to multiemployer plans could be quite destructive for plans and their beneficiaries and for the overall retirement security landscape for workers in sectors of the economy where multiemployer plans predominate. Over the last several decades, the number of defined benefit plans has significantly declined, eroding the retirement security of working families. Many factors, including accounting rules for single employer defined benefit plans, contributed to this trend. Should FASB impose unique and disproportionate disclosure burdens on employers participating in multiemployer plans, FASB could well improperly contribute to the further weakening of our already badly damaged retirement security system. Unfortunately, there is precedent for this type of consequence. There is little question that many private employers decided to modify or eliminate retiree health care benefits following the adoption of FAS 106, which involved capitalizing highly uncertain future costs.

A multiemployer plan is, as the name suggests, a benefit plan which a number of employers participate in. In this respect, it is a form of third party employee benefit provider. Other third party benefit providers include insurance companies, mutual fund complexes, trust companies, and third party administrators. There are a wide variety of arrangements between employers and third party benefit providers.

Proposed Paragraph 715-80-50-1B of the Exposure Draft requires the disclosure of a large number of items that no other third party employee benefit provider must disclose under GAAP. Other than those items describing or impacting an employer’s contribution obligation to a multiemployer plan (Items (c)(5), (g), (j) and (k)), we do not see the relevance, or value, of these disclosures. With the exception of these items, Paragraph 715-80-50-1B appears to be an effort to impose a unique, punitive disclosure regime on employers that participate in multiemployer plans. We urge that they not be adopted in the final update, and that in the final update preparers have the same disclosure obligations with respect to multiemployer plans that they have with respect to other third party employee benefit providers.

Withdrawal liability is a distinguishing feature of multiemployer plans. However, there could be parallel circumstances if an employer contracted to provide an employee benefit with a third party insurance company or trust. Currently withdrawal liability disclosure is covered under the “probable or reasonably possible” standard under Subtopic 715-80-50-2.

For employers participating in multiemployer pension plans, withdrawal liability represents a possible payment to the plan, a payment due only if the employer ends its participation at a time when the plan has unfunded vested benefits. In addition, under the

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With respect to Item (c)(5), disclosure should be limited to the effect any adopted funding improvement or rehabilitation plan has on the employer’s contribution obligation. It would be inappropriate to require the disclosure of “... remedies being considered by the plans ...,” as that information is generally not subject to public disclosure and is not relevant since it does not reflect formal action taken that could impact the employer’s contribution obligation.
Employee Retirement Income Security Act of 1974, as amended (ERISA), the statute that creates the withdrawal liability obligation, there are specific rules that can limit or eliminate withdrawal liability for a particular employer or an industry. These rules include an exception for the sale of assets (ERISA Section 4204), the de minimis rule (ERISA Section 4209) and the 20-year limitation on annual payments (ERISA Section 4219(c)(1)(B)). Under the special rules for the construction, entertainment and trucking industries, withdrawal liability may rarely be assessed. Other statutory relief provisions may apply if an employer sells all of its assets or becomes insolvent.

The determination and assessment of withdrawal liability is time sensitive as it depends upon when an employer in fact withdraws from a multiemployer plan. If a complete withdrawal occurs, the amount of any assessment is based on the allocation method used by the plan, the employer’s contribution history and the plan’s unfunded vested benefits, each determined as of the end of the plan year preceding the employer’s withdrawal, and the actuarial assumptions and methods used to value the plan’s unfunded vested benefits and assets.

Multiemployer pension plans typically value their assets and liabilities on an annual basis and the valuation results are generally available six to nine months after the end of the plan year. For an employer preparing financial statements on a calendar year basis, any withdrawal liability estimate available during the first quarter of any given year is likely to be at least one year out of date, assuming the plan also uses a calendar year reporting period.

Withdrawal liability is a contingent liability like other contingent liabilities. While it can be estimated, there are significant costs to both participating employers and to plans in doing so, and the resulting estimates have limited usefulness. There is no reason to subject this particular form of contingent liability to a separate disclosure regime that seeks to treat withdrawal liability as something other than what it is—contingent. Doing so would again raise the inference that a punitive double standard is at work in the financial accounting rules with respect to workers’ pension funds.

In line with the principle of fair treatment, FASB should require employers to report withdrawal liability under the same rules as employers are required to report other contingent liabilities. Should the Disclosure Draft entitled Disclosure of Certain Loss Contingencies be adopted, this would preserve the existing “probable or reasonably possibility” standard. The only addition would be that if an employer faced an assertion of withdrawal liability by a multiemployer plan that the employer felt was unlikely to be enforceable, but which nonetheless involved issues of nature, magnitude or potential timing that could lead to a “severe impact” on the employer, that remote contingency would have to be disclosed. We agree with the National Coordinating Committee on Multiemployer Plans that further explanation in this area of the earlier Exposure Draft would be helpful.

3 The Multiemployer Pension Plans Amendments Act of 1980, P.L. 96-364, added Sections 4201-4281 to ERISA and made other related changes to the statute.
We appreciate consideration of these comments and we would be pleased to provide any additional information or respond to any questions you have regarding these comments.

Sincerely yours,

Damon A. Silvers
Director of Policy & Special Counsel