

CONSTRUCTION FINANCIAL MANAGEMENT ASSOCIATION

The Source & Resource for Construction Financial Excellence

Mr. Russell Golden Technical Director Financial Accounting Standards Board 301 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

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

The Construction Financial Management Association (CFMA) is pleased to provide its response to FASB's Exposure Draft on Contingencies.

CFMA is uniquely focused in its representation of the financial interests of the construction industry. Our membership is comprised entirely of financial statement issuers, auditors, and users within the construction industry. As such, CFMA is particularly qualified to supply FASB and IASB with feedback as they work to establish accounting standards that impact our industry.

Multiemployer-Plan Disclosure Issues

There appears to be an inherent conflict between the thresholds of application between this Exposure Draft and the recently released Exposure Draft on Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80). The Exposure Draft on Multiemployer Plans would require withdrawal liability to be disclosed *if obtainable* (ASC 715-80-50-1B m.2). However, from the Exposure Draft on Contingencies, financial reporting entities would disclose withdrawal liabilities if they pose a potentially "severe impact" (ASC 715-80-35-1/715-80-50-1&2; 450-20-50-1D). The only way to know if a withdrawal liability poses a severe impact is to know what that withdrawal liability amount is at the date of the financial statements, which is impossible given the inability to obtain such information in a timely manner. Therefore, while one standard would require the latest obtainable information, the other standard would require a reporting entity to have timely information so that it can form a judgment regarding severity. This is a major conflict in the drafting of the two proposed standards that needs to be addressed.

We believe that the only practical way to address this conflict is to delete any reference to the multiemployer-plan disclosures in the Exposure Draft on Contingencies and instead fully address any disclosure-related issues in any ultimate Accounting Standards Update for Multiemployer Plans.

Insurance Offset Issues

The Exposure Draft states: "When assessing the materiality of loss contingencies to determine whether disclosure is required, the entity shall not consider the possibility of recoveries from insurance or other indemnification arrangements."

We believe that entities should neither categorically presume nor categorically ignore the possibilities of recoveries from insurance or other indemnification arrangements.

Throughout this proposed standard, FASB expects reporting entities to take complex fact patterns and have the requisite skills to form judgments regarding the severity and likelihood of various outcomes in preparing disclosures; but then (as noted in BC15), presumes that entities lack the ability to apply similar judgments as to the likelihood that insurance or other indemnification arrangements will mitigate exposure to risk of loss.

Therefore, if FASB truly believes that entities lack sufficient sophistication to assess the likelihood of recovery from insurance/indemnification agreements, then this proposed standard should be entirely reconsidered since these same entities would not possess the level of sophistication to form the other judgments required by this proposed standard.

Alternatively, if FASB believes that entities possess sufficient sophistication to form judgments about complex contingency issues, then, quite simply, it should presume the same level of sophistication exists to form judgments regarding the likelihood of exposure to loss mitigation through insurance/indemnification arrangements when assessing the materiality of loss contingencies.

Potential Loss Contracts

ASC Topic 605, specifically, the sections which were formerly contained in SOP 81-1, fully covers the issues related to potential loss contracts for performance contracts. The stated goal of the Exposure Draft is "more timely disclosure of remote loss contingencies with a potentially severe impact." This Exposure Draft has the potential for confusing and overlapping the accounting and disclosures for performance contracts already addressed by Topic 605 or the new proposed Exposure Draft, *Revenue from Contracts with Customers*. For this reason, we request that FASB specifically clarify that the accounting and reporting of losses related to performance contracts are exempted from this Exposure Draft.

Questions for Respondents

Question 1: Are the proposed disclosures operational. If not, please explain why?

No. The proposed multiemployer-plan liability disclosures are not operational as explained above.

Question 2: Are the proposed disclosures auditable? If not, please explain why?

No. The majority of the disclosures are not auditable. In an audit, confirmations or information, such as the legal letter written by an entity's outside legal counsel, and other outside sources, have much more value in an audit than management's representations. In disclosures regarding loss contingencies related to lawsuits, an entity's outside counsel letter is paramount to proper disclosures. If the information required by the Exposure Draft is not supplied by an entity's outside counsel, the information will not be auditable. Unless the Board coordinates the Exposure Draft's new required disclosures with the American Bar Association (ABA) and is able to obtain agreed-upon changes to the document issued in 1975, American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Request for Information, auditors will not be successful in being able to determine if management's representations are fairly presented on this issue.

As FASB knows, employers participating in multiemployer pension plans lack access to timely information, but even when stale information is obtained regarding withdrawal liabilities, employers and their auditors almost always lack sufficient available information to challenge assumptions in arriving at the calculated balance, hence making the withdrawal un-auditable.

Question 3:Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting information is not necessary?

No, even though FASB has attempted to define parameters to help ensure that the information required to be disclosed isn't prejudicial, it is still entirely possible that information required to be disclosed per the proposed standard could be deemed prejudicial by client counsel. In such circumstances, all parties are put in a "no-win" situation. The company must choose between the risk of creating economic losses that it might not have sustained if it chooses to disclose prejudicial information or risk possible qualifications to its audit opinion, including the possibility of an adverse opinion. The auditor is put in the position of enforcing compliance with a standard that carries with it the risk of creating economic harm to his/her client. Perhaps the only winner in this situation is the opposing party.

Question 4: Is the proposed effective date operational? If not, please explain why.

Yes. The proposed effective date is operational, but only if agreement can be reached with the ABA on litigation disclosures so that requested attorneys' letters provide the data that the Exposure Draft requires to be disclosed.

Question 5: Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?

For non-public entities, no. Any such information is clearly obtainable at the request of financial statement users.

Question 6: Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not please

explain why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.

Yes. Nonpublic entities should be exempt from the tabular reconciliation disclosures.

Question 7: The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

Yes. The proposed deferral is acceptable, as a start, until the *Blue Ribbon Panel* on Private Entity GAAP reaches its decision on the future of accounting for private entities.

Thank you for the opportunity to comment and for your consideration of our views.

Sincerely,

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