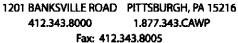
1860-100 Comment Letter No. 189



CONSTRUCTORS ASSOCIATION

— OF WESTERN PENNSYLVANIA —



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File Reference No. 1860-100

Re: FASB Multiemployer Pension Disclosure

On behalf of the members of the Constructors Association of Western Pennsylvania, I respectfully submit the following comments in response to the Proposed Statement of Financial Accounting Standards for Multiemployer Plan Disclosure. We appreciate the opportunity to offer our views on this important matter.

The Constructors Association of Western Pennsylvania (CAWP) is a trade association representing over 200 heavy and highway construction and construction-related companies operating in the thirty-three counties of western Pennsylvania. CAWP contractors are engaged in the construction of the region's highways, bridges, tunnels, airport runways, dams, waste treatment facilities, site preparation and utilities installation.

CAWP has several concerns about the negative impacts this proposed standard will have on contractors, their employees and the jointly sponsored pension plans. These concerns include the failure to recognize the distinctions between multiemployer plans, the cost and relevancy of these proposed changes and the negative financial impact the changes will have on the construction industry. We are deeply concerned that these proposed standards will provide misleading information to the readers of the financial statements, and will create an unnecessary and unreasonable burden on CAWP contractors

Multiemployer Plans vs. Single-Employer Plans

First, we believe that the proposed multiemployer disclosure draft is an attempt to apply a one-size-fits-all standard, without considering the distinct nature of multiemployer pension plans utilized by the construction industry. The proposed standards do not recognize the difference between multiemployer and single-employer plans and do not account for the withdrawal liability exemption that is specific to the construction industry. While we understand that FASB is not interested in taking into account the differences between multiemployer and single-employer plans and industry specific rules regarding

withdrawal liability for the construction industry, we believe that this is critical when determining whether withdrawal liability is remotely possible.

Multiemployer plans, similar to the ones to which CAWP contractors contribute, are different from single-employer plans in that they are sponsored by several different contractors that employ construction workers in the construction industry in western Pennsylvania who are covered by a collective bargaining agreement. CAWP members contribute to as many as six area "Taft-Hartley" multiemployer defined benefit pension plans that provide continued accrual of pension benefits for the nearly 20,000 union craft-persons who travel from contractor to contactor and project to project throughout western Pennsylvania.

Multiemployer pension plans are a valuable asset to the construction industry because they provide a way for smaller companies to provide significant pension benefits that they would be unable to provide on their own, and they allow contractors to provide pension benefits to its highly mobile workforce. The majority of the over 200 members of CAWP are small to mid-sized contractors who would be unable to provide their construction workers similar pension benefits through a single-employer benefit plan, as they can through the multiemployer plan.

In addition, the construction industry relies on a highly mobile workforce living and working throughout the geographical region of western Pennsylvania. This workforce builds highway projects located throughout the nearly 25,000 square mile area that makes up western Pennsylvania. Therefore, the only practical way to provide this workforce with retirement benefits in the construction industry is by utilizing pension plans that cover multiple employers. The only practical way for this workforce to accrue retirement benefits is through multiemployer plans.

Another significant difference that should be considered is that the determination of the level of pension benefit in the context of a multiemployer pension plan for the construction industry is systematically different from single-employer plans. To clearly understand this, one must first understand how the multiemployer pension plans to which CAWP contractors contribute are funded.

For CAWP contractors, this is accomplished through the collective bargaining process. The Association negotiates collective bargaining agreements on behalf of its members with six different trade unions. An important item in this bargaining process involves agreeing to a wage settlement, which determines how much of an increase the craftworkers will receive over the term of the agreement. The wage settlement accounts for all aspects of pay, including take-home pay, medical benefits and pension benefits. This wage settlement is driven by market forces, meaning that if the climate of the construction market is favorable, wages and benefits will most likely increase, whereas if it is not, management will not allow the wage settlement to impede their ability to competitively bid work.

After a wage settlement is agreed upon by management and labor, it is allocated into different categories such as take-home pay, medical plans and pension plans. In the event a particular pension fund is underfunded, the Pension Protection Act of 2006 requires the parties to address any funding deficiencies a multiemployer pension plan may be facing. If one of these plans is seriously underfunded, it is likely that a significant portion or all of the wage settlement will be allocated to that pension fund. The average term of a collective bargaining agreement is three years, so the funding deficiency can be addressed over that entire time period through a funding improvement plan or rehabilitation plan. Steps can be taken to reallocate money from take-home pay or other benefits to address a pension funding deficiency.

In contrast, if a single-employer pension plan is underfunded, the employer must make immediate contributions in the short term to address the funding deficiency. The monies that are used for this purpose are then unable to be used for other business purposes such as hiring additional employees, purchasing needed equipment or for research and development. Therefore, the funding deficiency in a single-employer pension plan is the sole responsibility and the direct liability of this one company, which in turn directly impacts the financial condition of the company; a fact that would be of interest to the reader of that company's financial statements.

When a multiemployer pension plan is underfunded, the liability is borne by several different contractors who are also participating in the plan and only affects the allocated amount negotiated in the wage settlement. This means the CAWP contractor is not required to transfer cash from other areas of the business to address the funding deficiency, as the single-employer must do. To require participants in a multiemployer pension plan to disclose their potential withdrawal liability would then be misleading to readers of the contractor's financial statements. Those readers will undoubtedly assume that the withdrawal liability represents some additional liability that the contractor will be required to pay in the immediate future, when in fact that liability can instead be addressed by reallocating current or future wage settlements to the underfunded plan.

Withdrawal Liability and the Construction Industry Exemption

For CAWP contractors working in the construction industry and utilizing multiemployer plans, another important distinction that must be recognized is the withdrawal liability construction industry exemption. While the proposed standard would require contractors to note potential withdrawal liability on their financial statements, there may in fact never be an obligation to pay withdrawal liability should the contractor decide to withdraw from the plan. This is due to the fact that in the construction industry, the law provides specific rules governing withdrawals that recognize the unique nature of how the construction industry operates.

Withdrawal liability would be assessed only if the contractor ceases its obligation to contribute to the plan but continues to work within the jurisdiction of the collective bargaining agreement, or returns to do the same type of work in the jurisdiction within

five years, without in either case, resuming contribution obligations to the plan. Therefore, if an employer goes out of business, under the provisions of this rule, withdrawal liability would not be assessed. The fact is that the assessment of withdrawal liability is very rarely triggered on multiemployer pension plans in the construction industry. Again, unless the reader of a contractor's financial statements understands this exemption, the disclosed potential withdrawal liability the contractor would be required to add to the financial statements will be misleading and harmful, since it will affect a contractor's bonding capacity and access to capital. While we would agree that contractors who have participated in a plan and are now electing to withdraw should be required to disclose this liability, those contractors continuing in the plan and whose withdrawal liability is not probable for the reasons stated above should not.

Cost and Burden of Obtaining the Information

Another concern held by CAWP is the cost and burden to our contractors as a result of being required to routinely disclose this information in their financial statements. The cost and sheer volume of material required to compute withdrawal liability for the 200 contractor members participating in up to six different multiemployer pension plans is staggering. By law, our contractors are able to request an estimate of their withdrawal liability each year from the plans, which are allowed to charge a reasonable cost for calculating. Those costs range from approximately \$500 to \$2,000. Although very few contractors make such a request, consider the cost if all 200 CAWP contractors were required to request, interpret and report their potential withdrawal liability assessments from all the plans in which they participate. Clearly the burden of obtaining this information coupled with the misleading conclusions that will result, will not justify the additional information that is made available to the readers of the financial statements.

In addition, a significant burden would be placed on the plans, which would be required to perform withdrawal liability calculations for each and every employer on an annual basis. It is altogether possible that these plans would not be able to provide the necessary information at first, and would need to increase their administrative staffs to meet this demand. If such a plan is experiencing underfunding as most are due to the recent financial crisis, the hiring of more administrative staff will lead to an administrative burden that in turn will cost the plan the badly needed funds to provide obligated retirement benefits to the workers in the plan.

Relevancy of the Information

While the burden to CAWP contractors and the plans might not be sufficient reason for FASB to reconsider the proposed standard, the answer to the question of what benefit will be gained by requiring such disclosures should. For all the reasons stated above, any disclosures will be misleading, open to inherent misinterpretation and more than likely meaningless. Multiemployer plans to which CAWP contractors contribute make a valuation of their assets and liabilities on an annual basis. These valuations are complicated and time consuming, and the results are typically not available until six to nine months after the measurement date. In most cases, the most recent available

withdrawal liability estimates will be more than a year out-of-date by the time they are included in a contractor's financial statements. Again, such a disclosure would be misleading and harmful to CAWP contractors.

It is CAWP's sincere hope that FASB will take into account these submitted comments, and consider the serious and potentially devastating consequences they would have on our contractors. Thank you.

Sincerely,

Richard J. Barcaskey Executive Director