

Certified Public Accountants / Business Consultants

October 29, 2010

Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk CT 06856-5116
Attn: Technical Director – File Reference No. 1860-100
(Via Electronic Mail to director@fasb.org)

Re: Comment letter - on the FASB Exposure Draft issued September 1, 2010 – Proposed Accounting Standards Update – Compensation – Retirement Benefits – Multiemployer Plans (Subtopic 715-80)

Ladies and Gentlemen:

Feeley and Driscoll, PC services the largest construction contractor client base of any CPA firm in New England. The firm is also a member of Praxity, and is active in their Construction Contractor Services Committee. Feeley and Driscoll CPA's have been actively applying construction accounting principles, including the AICPA construction contractor audit guide and SOP 81-1, for over 30 years and to hundreds of construction contracting companies. The members of the firm are very experienced in all facets of construction accounting and auditing. Our experience includes annual communications with sureties, banks, and other users of financial statements. Our comments incorporate comments that some of our clients as well as sureties, bankers and other users of the financial statements specifically requested that we include in our comment letter.

The Boards' efforts to improve disclosures related to an employer's participation in a multiemployer postretirement plan

We applaud the Boards on their effort to improve financial reporting with respect to disclosure about an Employer's Participation in multiemployer plan. We appreciate that the board has received comments from various constituents on the perceived lack of transparency about an employer's participation in a multiemployer plan. We also understand that the Board does not intend to convergence with proposed international standards regarding multiemployer plans.

Further, we appreciate the engagement of FASB, in particular, for its outreach to the construction industry as it has deliberated this proposed standard.

<u>Comments requested by the Board in its Summary and Questions for Respondents on page 1 to 3 of the Proposed Accounting Standards Update</u>

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 do not 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.



The description of suggested alternatives and specific reasoning supporting the suggested alternatives:

The suggested alternative would be to make only two changes to the Multi-employer pension plan disclosures now utilized in practice by the construction industry. That change would be to change the standard paragraph now utilized in multiemployer plan disclosures from:

"The Multiemployer Pension Plan Amendments Act of 1980 amended ERISA to establish funding requirements and obligations for employers participating in multiemployer pension plans, principally related to employer withdrawal from or termination of such plans. Separate actuarial calculations of the Company's position are not available with respect to the multiemployer pension plans."

To our suggested alternative disclosure:

- 1) "The Multiemployer Pension Plan Amendments Act of 1980 amended ERISA to establish funding requirements and obligations for employers participating in multiemployer pension plans, principally related to employer withdrawal from or termination of such plans. Separate actuarial calculations of the Company's position are not available with respect to the multiemployer pension plans. Because reasonable information regarding the amount of such liability is not available, under GAAP, it is customary that a liability is not recorded for multiemployer pension plans, as it is for single employer pension plans for which such a liability amount is available.
 - However, if the company decides to withdraw from such plans, or the plans themselves are terminated, the plan is required to compute an amount of the liability that the company owes as of the date the Company's participation in the plan terminates. The Company would likely be required to record a substantial withdrawal liability, or record a substantial pension liability related to a plan that terminates. The company has not decided to withdraw from any of the plans, and has not been notified of any intention by any of the plans to terminate."
- 2) Add a line to long term liabilities specifically titled "Contingent multiemployer pension plan liability –see note X" and add a line in equity specifically titled "Contingent accumulated other comprehensive loss see note X".

The implementation of our suggested alternative disclosure will allow the continued preparation of high quality comparative financial statements for construction contractors, with disclosures regarding the multiemployer plan that are less voluminous and more understandable and reliable than the disclosures as proposed by the Board.

The boards suggested disclosure adds many detailed disclosures about each of the company's specific union contracts and terms related to multiemployer pension costs. Such information is above the scope of understandability of most users of the financial statements to interpret as to whether such information should be utilized by them to adjust the financial position and results of operations as reported on the face of the financial statements for their own analysis purposes.

Most users of the financial statements rely on the CPAs opinion that the balance sheet and income statement as presented are reliable, and most users do not believe they should have to adjust the balance sheet and income statement amounts as reported by the CPA to get reliable financial statements for their use. The boards proposed standard indicates that even the five most technically qualified members of our profession that have intensely studied this issue along with their nearly as technically qualified support staff, are unable to quantify how the information presented in the proposed disclosures should be used to adjust the financial position and results of operations as reported under the current standards to make them more usable to readers.



The users of the financial statements for the tens of thousands union construction contracts issued every year, do not have the years of experience and financial training of the board. We believe the profession has an obligation to only put in the basic financial statements information that supports the amounts as reported in the financial statements, and not include amounts and disclosures that imply that the user should use such amounts and disclosures to adjust the financial position and results of operations as presented on the face of the financial statements. In effect, the Board is telling users of the financial statements that financial statements prepared under GAAP are not reliable or comparable for general use, and that users of the financial statements should take supplemental information disclosed in the notes to modify the financial statements, as best they can with their limited technical experience and training, to make them useable and comparable to other Companies financial statements.

The boards proposed additional disclosures to multiemployer pension plans will create a general mistrust in the reliability of the amounts presented on the face of the statements of financial position and results of operations. These additional disclosures, in our opinion, only belong in the notes to the financial statements when such amounts are reliable enough to be used to adjust the face of the financial statements themselves. Should the board in the future determine that it is practical to expect that accurate amounts can be timely obtained to allow such amounts to be recorded on the face of the financial statements, and then perhaps inclusion of amounts and disclosures in the notes supporting such calculations of amounts on the face of the financial statements would be appropriate.

Detailed specific reasoning for the suggested alternatives, as communicated to us by clients includes:

- 1) The implementation of this proposed change to disclose the potential unfunded multiemployer pension plan withdrawal liability could be misleading to the financial user of financial statements including banks, bonding companies and other users. This calculation is based on actuarial assumptions at a point in time such as future man hours funding, mortality, discount rates, return on assets, expected retirement dates, projected increases in compensation.
 - Based on the large changes in fair value and performance of the plan's assets, in addition to any changes in actuarial assumptions the amount of the withdrawal liability could materially change from one period to the next. The use of this widely fluctuating liability by users of the financial statement to attempt to adjust reported earnings and liabilities will lead to inconsistent comparability between reporting entities.
- 2) For the construction industry it is difficult to obtain this information on withdrawal liability which could take 6-9 months after year end and will require the costly calculations of the amounts of liability. These costs include actuarial costs as well as internal accounting costs to review the data and assumptions.
 - In addition external CPA firms will also need to review these results. To meet stringent reporting requirements by banks and bonding companies as well as state prequalification statements which allow contractors to bid work, this could be misleading since the information could be outdated if contractors had to use previous year information vs. current year information which may not be available in a timely manner.

It is highly unlikely that union pension plans will be able to supply the information in a timely manner to allow proper disclosure in the financial statements for a calendar year contractor in light of every employer participant in these plans requesting this information. Use of untimely or incomplete information does not result in high quality financial reporting.



3) The proposed requirement to disclose expected contributions for the next annual period will be difficult, if not impossible to determine based on factors unknown at the time of the financial statement. In the construction industry contributions to these plans will fluctuate based on the amount, size, and type of contracts as well as which state one operates in for contracts that are being performed in any given year. The contractor may not know how many contracts they will sign, type and size of the project or how many union employees are required on the various jobs in multiple locations.

This information will require projections which are subject to change based on the actual work levels actually achieved in the next period which may be unknown at the time of the financial statement preparation and issuance. Therefore if this information is required it will have little usefulness to the user of the financial statements and have little underlying support for the amount being projected in the next year. Disclosure of such unreliable information will result in a perceived lowering of the quality and accuracy of financial reports prepared by the profession.

4) Other potential obligations, such as possible increased contribution obligation as a result of a rehabilitation plan or funding improvement plan for a pension plan in critical or endangered status, may not be known and available for timely disclosure. Again, this will lead to the impression that financial reporting standards are resulting in lower quality financial statements.

Question 2: Do you believe that disclosing the estimated amount of withdrawal liability, even when withdrawal is not reasonably possible will provide users of financial statements with decision-useful information?

We do not agree that the proposed disclosures provide decision useful information for the same reasons noted in our question one response, which is that the proposed disclosures imply that the amounts reported on the face of the financial statements are not decision useful, and that the incomplete and inaccurate information proposed for the disclosure should somehow be utilized by the reader to modify the financial position and results of operations to get a more reliable financial statement.

We believe the suggested guidance in our question 1 response above; for the reasons in our question one response, provides better decision useful information.

Additional Detailed specific reasoning for the suggested alternatives, as communicated to us by clients includes:

1) Current accounting standards require disclosure of a contingent liability if there is a probable or reasonably possible chance of the contingency resulting in liability to the organization. If a contractor decides to withdraw from a plan this withdrawal liability would be disclosed in the financial statements. Based on the going concern theory we do not believe that this occasion would normally occur and therefore this liability should not be disclosed unless the contractor intends to withdraw. Based on the issues above in the cost of these calculations it does not seem prudent to have to disclose a liability that has a remote possibility of occurring which could be misleading to the user of financial statements.

In addition, this could limit the credit or bonding capacity of a contractor or subject them to covenant violation on existing lines of credit. By including these disclosures for all contingent liabilities without regard for the realization of the withdrawal liability being paid will not provide useful information to the user of the financial statements.

The boards changing of disclosure requirements for contingencies such as this seems to imply that the board believes that users are more qualified than the board to determine how contingent liabilities should result in adjustments of financial position and results of operations to produce more relevant financial information, rather than as supporting information to the amounts presented on the face of the financial statements.



1) The Multiemployer Pension Plan Amendments Act of 1980 governs withdrawal liability. A withdrawal occurs only if the employer ceases to have an obligation to contribute under the plan and continue to perform work in the jurisdiction of the collective bargaining agreement or return to do the same type of work in the jurisdiction within five years without resuming the contributions to the plan.

Based on these rules, a contractor could go out of business or choose to stop performing work in a specific jurisdiction and never incur a withdrawal liability. For this reason we believe the construction industry should be exempted this disclosure requirement under the exposure draft. If the intent of the contractor to withdraw is remote, the amount of that potential withdrawal liability is not relevant and should not be disclosed.

2) The potential large withdrawal liability amount may be misunderstood by the users of the financial statements as it does not represent the actual liability until a contractor withdraws from the agreement, contractors will have a more difficult time obtaining financing or bonding capacity in today uncertain economy.

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

- 1) We believe there to be tremendous costs associated with compiling the information, reimbursing plans for actuarial costs and additional audit fees in complying with this exposure draft.
- 2) We believe for the reasons in question one that these substantial additional costs are used to actually create a negative benefit to users. We believe issuance of a standard that increases employers financial reporting costs to provide less useful and reliable financial statements reflects negatively on the profession as a whole; particularly in these austere times where employers look at the creation of such standards by the board as a wasteful allocation of resources, and the CPAs that profit by these standards as a hindrance to their company rather than a help.

Additional Detailed specific reasoning for the suggested alternatives, as communicated to us by clients:

1) They provided the same reasoning as above.

Question 4: Are there any significant operational issues that the Board should consider in determining the appropriate effective dates of the final amendments?

- 1) The main issue is whether the contractors can receive timely information from the pension plans to make the proper disclosure, if disclosure is deemed appropriate and becomes required as part of the final standard. Because this exposure draft was just issued in September and needs to be complied with by the end of this year for public companies, this may not be realistically possible.
 - The result will probably be a standard that is only half implemented, which will only demonstrate to users that the profession does not care enough about the standard to make sure that it is implemented with the due professional care to obtain financial statements that comply with high quality professional standards, which the financial reporting community expects from us.
- 2) We believe the board should not create an effective date until it has addressed how this guidance will effect and be applied to a subsidiary only financial statement where subsidiary companies are covered by a multiemployer plan limited to the Parent and subsidiary companies, with no outside companies.

In this situation, where the parties are related, it may be somewhat more practical to develop a method for allocating the overall known over/under funding liability. In any event, we believe the board needs to consider developing this guidance before it issues an incomplete standard that will need to be immediately revised to address this issue.



Additional Detailed specific reasoning for the suggested alternatives, as communicated to us by clients includes:

Clients that issue subsidiary only financials where the parent is the multiemployer plan provider indicated that they believe that the subsidiary only financial statements should be exempt from the proposed multiemployer disclosures, due to the comparatively higher cost of generating this information than for a single employer that does not issue subsidiary statements.

Question 5: Do you agree with the deferral of the effective date for nonpublic entities for 1 year?

We do not agree. We believe the deferral of the effective date should be a minimum of 2 years for private companies to allow them the time needed to educate their bankers and sureties on how these disclosures need to be utilized by them in making revisions to loan and bonding covenants as well as meetings with Unions to develop the information as it relates to their company.

Our clients responded to this question with a Yes to the one year deferral, as we do not believe they understood that it was possible to suggest a longer than one year deferral to the FASB.

Question 6: Should any of these provisions be different for nonpublic entities?

No. We strongly believe that the board has a responsibility to write professional standards that are high quality and that the board has taken due professional care in understanding what good financial reporting standards are for all entities that issue financial statements. If the board believes it is writing a standard that should not apply to nonpublic companies

Our clients responded to this question as follows:

1) We believe that private companies should have a lower threshold of disclosure similar to single employer plans for FASB 158.

Question 7: Regarding the proposed and existing XBRL elements being sufficient to meet SEC requirements to provide financial statement information in the XBRL format.

We believe that the XBRL format is not conducive to providing comparable information useful for private companies when public companies are allowed to utilize different financial reporting standards than private companies. Such a practice destroys the ability of private companies to utilize their only source of comparable entity financial statements, since most private company's financials are not available to competitors, to compare their financial information.

Our clients responded to this question as follows:

N/A for nonpublic companies. No comment.

Transition

We do not agree with Paragraph 85, that the proposed standard is to be applied retrospectively using the guidance located in ASC 250-10-45-5 through 10. We believe that for construction contracts the solution is to apply the new standard prospectively a cumulative catch up adjustment to beginning retained earnings in the most recent year being presented. The cost benefit for retrospective adoption for construction contracts is not justifiable or desired by either clients or users of such financial statements.



Conclusion

We sincerely appreciate the opportunity to respond to the Boards' request for comments.

Sincerely yours, FEELEY & DRISCOLL, P.C.

Edward J. Callahan