



ASSOCIATION OF THE WALL AND CEILING INDUSTRY

SERVING CONTRACTORS, SUPPLIERS, DISTRIBUTORS AND MANUFACTURERS

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October 29, 2010

Technical Director
File Reference No. 1860-100
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Via email: director@fasb.org

Re: File Reference No. 1860-100
Disclosure about an Employer's Participation in a Multiemployer Plan

Dear Sir or Madam:

Thank you for the opportunity to comment on the Exposure Draft referenced above. The Union Contractor Council of the Association of the Wall and Ceiling Industry (AWCI) represents more than 700 building contractors that contribute to multiemployer plans.

SUMMARY

The proposed Accounting Standards Update (Update) on Subtopic 715-80 would require numerous disclosures related to an employer's participation in one or more multiemployer plans. These disclosures are proposed to address concerns from financial statement users regarding a perceived lack of transparency in this area. Several of the proposed disclosures would require immaterial or even misleading information to be included in an employer's financial statements. Those proposed disclosures might initially improve a financial statement user's perception of transparency; in reality, they would only cloud the user's perspective.

We are most concerned about the proposed changes related to potential withdrawal liability. We strongly believe that FASB's current withdrawal liability disclosure threshold – requiring an employer to disclose potential withdrawal liability when it is at least reasonably possible that the liability will be assessed – sufficiently informs financial statement users. We urge FASB to maintain its current withdrawal liability disclosure threshold and eliminate any new withdrawal liability disclosure requirements.

We agree that several of the disclosures proposed in the Exposure Draft could provide useful information to a financial statement user about an employer's multiemployer plan participation. Those proposals are described herein.

THE CONSTRUCTION INDUSTRY WITHDRAWAL LIABILITY EXEMPTION

The Association of the Wall and Ceiling Industry is a construction industry association, and these comments are submitted on behalf of its Union Contractor Council construction industry employers. The construction industry at large has a significant

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stake in the accounting treatment of multiemployer plan participation as more than 50 percent of multiemployer plans in the country are construction industry plans.¹

The unique nature of the construction industry is recognized in the Employee Retirement Income Security Act (ERISA) via the construction industry withdrawal liability exemption (the exemption) at 29 U.S.C. § 1383(b). This federal law creates a significant withdrawal liability exemption for any construction industry employer who is contributing to a construction industry plan or any plan that has elected to adopt the exemption. As a result of the exemption, the assessment of a withdrawal liability to a construction industry employer occurs almost exclusively, only when an employer ends his contractual relationship with the local union and its multiemployer plan and continues to perform the previously covered scope of work in the previously covered geographic area. A decision to 1) terminate participation in a multiemployer plan, and 2) continue performing work in the previously covered craft and geographic jurisdictions, is necessarily a planned event.

The construction withdrawal liability exemption obviously has a substantial impact on construction industry employers' withdrawal liability obligations to multiemployer plans. Financial statement users cannot be expected to take the exemption into account in reviewing a construction employer's financial statements. Therefore, the disclosure of a construction industry employer's potential withdrawal liability, when the employer is not planning to incur such liability, would be patently misleading.

FASB has received many comments to the Exposure Drafts for Topic 450 and Subtopic 715-80 that express significant concerns about proposals that would require an employer to disclose potential withdrawal liability when it is not at least reasonably possible that it will be imposed. We also have serious concerns related to the disclosure of withdrawal liability and describe those concerns in these comments. We urge FASB to consider the many comments it has received which oppose new disclosures related to potential withdrawal liability, and eliminate any new withdrawal liability disclosure requirements while maintaining its current withdrawal liability disclosure threshold.

Despite the many valid concerns expressed in these and other comments, we are forced to recognize that FASB may nonetheless choose to implement a new disclosure requirement related to potential withdrawal liability. In that event, FASB should recognize the construction industry withdrawal liability exemption in drafting any updates to its *Accounting Standards Codification* to reduce the misleading nature of any new potential withdrawal liability disclosures. The most logical recognition of the exemption would be its simple extension to the Codification by exempting construction industry employers from any disclosure requirements related to withdrawal liability unless it is at least reasonably possible that the employer will actually incur such liability.

REVIEW OF FASB'S QUESTIONS FOR RESPONDENTS

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

¹ Policy, Research and Analysis Dep't, Pension Benefit Guar. Corp., No. 14, Pension Insurance Data Book 2009, at 104 (2010), available at <http://www.pbgc.gov/docs/2009databook.pdf>

obligations arising from its participation in a multiemployer plan? Why or why not? If not, what changes would you suggest to the proposed amendments?

Several of the proposed disclosures will not result in a more useful or transparent disclosure of an employer's obligations. FASB proposes 13 primary disclosures in the Exposure Draft in section 715-80-50-1B. Each is addressed below:

- a. **The number of plans in which the employer participates.**
- b. **For individually material plans, the name of the plan(s).**

We agree that items (a) and (b) could provide useful information to financial statement users who are interested in an employer's participation in multiemployer plans.

- c. **Narrative descriptions of all of the following:**
 1. **The employer's exposure to significant risks and uncertainties arising from its participation in the plan(s). That narrative description shall include the extent to which, under the terms and conditions of the plan(s), the employer can be liable to the plan(s) for other participating employer's obligations.**
 2. **How benefit levels for plan participants are determined.**
 3. **Whether the employer is or is not represented on the board of trustees of the plan(s) or a similar body.**
 4. **The consequences the employer may face if it ceases contributing to the plan(s).**

The NCCMP in its September 20th comments did an excellent job of explaining its concerns with items (c)(1), (c)(2), (c)(3), and (c)(4).² The NCCMP notes that to satisfy the requirements of items (c)(1), (c)(2), (c)(3), and (c)(4) would: 1) require employers to speculate on the solvency of their competitors; 2) add potentially hundreds of pages to financial statements with little, if any, value to end users; 3) imply a contradiction to the fiduciary duty of employer-trustees; and, 4) require a redundant disclosure, respectively. We share those concerns, and respectfully request that items (c)(1) through (c)(4) be eliminated.

5. **Any funding improvement plan(s) or rehabilitation plan(s), including the expected effects on the employer. For plans in regulatory warning zones, the warning status and remedies being considered by the plan(s) should be described, if known.**

We agree that the first sentence of item (c)(5) could provide useful information to financial statement users who are interested in an employer's participation in multiemployer plans.

While we agree that the first sentence of item (c)(5) requires the disclosure of potentially meaningful information, we find the second sentence of item (c)(5) to be troubling. Plan trustees typically consider all available remedies in developing a

² 1860-100 Comment Letter No. 8 from Randy DeFrehn, Executive Director, Nat'l Coordinating Comm. for Multiemployer Plans (Sept. 20, 2010), at 9-10.

funding improvement or rehabilitation plan, covering the full range of remedies allowed to all benefit plans under ERISA. Employers who are trustees would disclose that full range of remedies, or speculate on which remedies the trustees will eventually agree upon. Employers who are not plan trustees would be forced to rely on second hand information to satisfy the disclosure requirement. At best, a complete and accurate disclosure of a plan's considerations would describe all the legal remedies available to all plans. At worst, a disclosure of a plan's considerations would provide misleading, speculative information.

Furthermore, the second sentence of item (c)(5) is troubling because of the sensitive nature of trustees' discussions about funding improvement or rehabilitation plans. Speculative disclosures related to those discussions could disrupt or even compromise the fund's process of developing a successful funding improvement or rehabilitation plan.

The proposed disclosure related to the warning status and remedies being considered by a plan would not provide financial statement users with useful information, and could be disruptive to the business of the multiemployer plan. We respectfully request that the second sentence in item (c)(5) be eliminated.

- d. A description of the nature and effect of any changes affecting comparability from period to period, including both of the following:**
 - 1. A business combination or a divestiture.**
 - 2. The rate of employer contributions for each period for which a statement of income is presented.**

We agree that item (d) could provide useful information to financial statement users.

- e. Total assets and the accumulated benefit obligation of the plan(s), if obtainable, as of the most recent financial statement plan year-end and, for comparability, those amounts for the corresponding prior periods.**

The disclosure of this information in an employer's financial statements would not aid a financial statement user in understanding the financial position of an employer. The perceived value of this information is related to the funded position of the plan, which is adequately described and better understood through the disclosure of a plan's funding improvement or rehabilitation plan. Additionally, plans' financial information is readily available to interested parties through the U.S. Department of Labor's form 5500, which become public documents when filed. We respectfully request that item (e) be eliminated.

- f. Employer's contributions as a percentage of total contribution to the plan(s), if obtainable, for the year ended as of the employer's latest statement of financial position date or most recent date available before the statement of financial position date and, for comparability, that percentage for the corresponding prior periods.**

This disclosure in combination with item (e) appears to be aimed at estimating an employer's share of a plan's unfunded liability. For several reasons it would be inappropriate to include this information in an employer's financial statements. As we

will thoroughly explain in our response to Question 2 below, we believe the disclosure of an employer's potential withdrawal liability in its financial statements is misleading unless it is at least reasonably possible that the liability will be assessed. Disclosure item (f) would only encourage a financial statement user to "guesstimate" an employer's share of a plan's unfunded liability, which would very likely produce a wholly inaccurate result. We respectfully request that item (f) be eliminated.

- g. A description of the contractual arrangement(s), including all of the following:**
 - 1. The term of the current arrangement(s).**
 - 2. For each future year covered by a contract, the agreed-upon basis for determining contribution(s).**
 - 3. Any minimum contribution(s) required by the agreement(s).**

We agree that item (g) could provide useful information to financial statement users.

- h. Percentage of the employer's employees covered by such plan(s).**
- i. Quantitative information about the employer's participation in the plan(s), for example, the number of its employee participants as a percentage of total plan participants disaggregated between active and retired participants, if obtainable, as of the most recent date available.**

Construction industry employers expect to have a highly variable workforce both in terms the individuals employed and the total number of employees. Construction industry employees regularly move between employers, which is the very reason for the existence of multiemployer plans. Construction is a transient profession because of the highly variable scope and volume of projects any employer might perform at a given time. As a result, construction industry employers would not normally maintain records on the active or retired status of their former employees, for example, and would struggle to provide a meaningful and accurate response to item (h) and (i).

More concerning is the fact that the information required by items (h) and (i) again appears related to the employer's share of a plan's unfunded liability. Like item (f), and for the same reasons, we believe it would be misleading to include this information in an employer's financial statements.

We respectfully request that items (h) and (i) be eliminated.

- j. Amount of contributions for the current reporting period.**
- k. Expected contributions for the next annual period.**

We agree that items (j) and (k) could provide useful information to financial statement users

- 1. Known trends in contributions, including the extent to which a surplus or deficit in the plan may affect future contributions.**

The disclosures required in item (g) and the first sentence of item (c)(5) should provide users of financial statements with adequate information related to the contribution obligations of the employer. Future contribution rates, if known and specified, are

established through collective bargaining. Contribution rate increases may be specified in a plan's funding improvement or rehabilitation plan, which subsequently become a subject of bargaining. If contribution rates are established in a collective bargaining agreement they should be disclosed as part of item (g). If contribution rate increases are specified in a funding improvement or rehabilitation plan, they should be disclosed as part of item (c)(5). Any additional information about contribution trends, especially as they related to a plan's surplus or deficit would be purely speculative. Therefore, we respectfully request that item (l) be eliminated.

- m. For plans for which an amount is required to be paid on withdrawal from the plan or windup of the plan:**
- 1. Details of any agreed deficit or surplus allocation to participating employers on windup.**
 - 2. The amount that is required to be paid on withdrawal from the plan as of the most recent date available, if that information is obtainable.**
 - 3. If the amount required to be paid on withdrawal is not obtainable, information about the employer's relative participation in those plans (such as percentage of total contributions to such plans or percentage of participants covered by such plan(s)).**

Information related to an employer's potential withdrawal liability is highly speculative, misleading to financial statement users, and stale by the time it could be delivered via a financial statement. Our reasoning is outlined in our answer to Question 2. We respectfully request that item (m) be eliminated.

The NCCMP has suggested that an employer's maximum annual withdrawal liability payment might be disclosed instead of a withdrawal liability estimate.³ This suggestion is a slight improvement, but still not a reasonable disclosure requirement because this payment figure is very misleading.

An employer's maximum annual withdrawal liability payment will change annually according to previous years' contribution units and rates; however, it does not change according to an employer's withdrawal liability. For this reason the figure does not add any value to a financial statement, and is very misleading. An employer could have zero or a very small withdrawal liability amount – smaller than the payment figure – but that maximum payment figure would not be changed. Further, and as explained in other comments, the maximum annual payment figure is rarely utilized because of the nature of the situation in which a withdrawal liability is assessed. The amount itself is frequently disputed. An employer who withdraws from a plan has typically planned for the withdrawal, and will negotiate a withdrawal liability settlement with the plan or subject itself to the litigation process.⁴

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

³ See Comment Letter from Randy DeFrehn, Nat'l Coordinating Comm. for Multiemployer Plans, *supra* note 2, at 8.

⁴ *Id.* at 2; see also 1860-100 Comment Letter No. 100 from John Grau, Chief Executive Officer, Nat'l Electrical Contractors Ass'n (Oct. 26, 2010), at 1.

The disclosure of an employer's potential withdrawal liability estimate when it is not at least reasonably possible that it will be assessed would not provide financial statement users with decision-useful information. We strongly disagree with item (m)(2) in the Exposure Draft.

Withdrawal liability estimates are highly speculative and may be misleading. Without being tied to a specific planned event, withdrawal liability figures can fluctuate significantly according to factors such as investment market performance, industry activity, and each employer's individual activity. An individual employer's withdrawal liability estimate is provided based on historical information that may or may not factor into a final withdrawal liability assessment depending on its timing. In fact, any individual employer's final withdrawal liability assessment could be dramatically different from previous estimates. Further, the construction industry withdrawal liability exemption effectively allows the employer to choose when or even if withdrawal liability will be assessed. Therefore, an actual withdrawal liability assessment is likely to differ substantially from estimates due both to the fluid nature of the estimates and the timing of the final assessment. As a result, withdrawal liability is a highly speculative and even theoretical concept to any employer who is not planning an imminent withdrawal.

Withdrawal liability estimates are stale if not inaccurate by the time they can be included in a financial statement. Withdrawal liability figures are typically not available until several months following the end of a plan's fiscal year. By the time those estimates could be shown in an employer's financial statements, the information would probably be more than one year old. It is very likely that substantial changes in withdrawal liability estimates would take place by the time they could be shown on an employer's financial statements, causing the disclosures to be wholly inaccurate.

The construction industry withdrawal liability exemption emphasizes the misleading nature of any requirement to disclose information related to potential withdrawal liability when it is not at least reasonably possible that it will be imposed. Again, as a result of the exemption, the withdrawal liability is assessed to a construction industry employer by a construction industry plan almost exclusively, only when an employer ends his contractual relationship with the local union and its multiemployer plan and continues to perform the previously covered scope of work in the previously covered geographic area. A decision to 1) terminate participation in the multiemployer plan, and 2) continue performing work in the covered craft and geographic jurisdictions, is necessarily a planned event. The construction industry withdrawal liability exemption makes a rare event – an unplanned withdrawal liability – practically nonexistent for construction industry employers who contribute only to construction industry plans.

Question 3: What implementation costs, if any, will an employer face in applying the proposed disclosures? Are these costs significantly different when applying the proposed disclosure requirements to foreign plans?

Multiemployer plans will face a significant burden if employers are required to disclose related information in their financial statements. Multiemployer plans will receive requests for plan information from most if not all of its contributing employers. Plans will charge employers fees for those services if they can. If they are not allowed to charge for those services, the plans themselves will bear the cost of providing the

information to employers.

Employers will face large burdens in gathering and organizing data to satisfy new disclosures. These burdens will require the dedication of significant staff time. This burden will be especially applicable to larger employers that contribute to numerous multiemployer plans. Employers of all sizes would very likely see a significant increase in the staff costs associated with the preparation of their financial statements.

There is an especially significant burden associated with item (m)(2). Many construction employers contribute to multiple multiemployer plans; large employers may contribute to dozens or more. Only the actuary or administrator associated with the specific plan can reasonably produce an accurate withdrawal liability estimate for a contributing employer. Many if not most plans or their actuaries themselves charge contributing employers for this service, which can be very time consuming and therefore costly. The Exposure Draft proposes that these estimates be calculated and disclosed for each plan the employer has contributed to in recent years, which would be a monumental task for plans and employers alike.

The portion of Question 2 that relates to foreign plans is not addressed in these comments.

Question 4: Not addressed.

Question 5: The Board intends to defer the effective date for nonpublic entities, as defined in transition paragraph 715-80-65-1, for one year. Do you agree with the proposed deferral? If not, please explain why.

FASB has recently released two Exposure Drafts: Topic 450 (File Reference No. 1840-100) and Subtopic 715-80 (File Reference No. 1860-100), which propose changes to disclosures related to an employer's participation in a multiemployer plan. Each of the aforementioned Exposure Drafts refers to paragraph 715-80-50-2. Paragraph 715-80-50-2 includes the disclosure threshold for potential withdrawal liability related to multiemployer pension plans. The overlap of the Exposure Drafts has given rise to questions about FASB's intent with regard to the potential withdrawal liability disclosure threshold, which should be clarified prior to the implementation of any update. The proposed changes to the disclosure threshold contained in the Topic 450 Exposure Draft and the proposed disclosures contained in the Subtopic 715-80 Exposure Draft are sufficiently related as to merit a single discussion. We respectfully request that FASB consider the comments it has received on both Exposure Drafts and issue a revised, consolidated Exposure Draft.

If FASB chooses to move forward with the separate Exposure Drafts, the proposed effective date does not provide sufficient time to prepare the required disclosures. The information required by several of the proposed disclosures can be obtained only by request through each plan. Larger multiemployer plans could have hundreds of contributing employers. Providing plan information to all contributing employers would likely require plan administrators to implement program and/or recordkeeping changes and plan actuaries to provide dedicated staff to the task.

Employers would also bear a substantial burden in gathering potential withdrawal

liability information. The delivery of those estimates would probably be significantly delayed due to the increased demand for them. Larger employers – those who contribute to many multiemployer plans – would likely have to dedicate a staff member to compiling withdrawal liability estimates well in advance of the employer's audit.

Because of the significant burdens placed on plans and employers alike, we respectfully request that the effective date of any disclosures related to multiemployer plans be delayed a minimum of two full years following their final approval. An effective date of the first fiscal period ending after December 15, 2012 would be more acceptable.

Question 6: Not addressed.

Question 7: Not addressed.

CONCLUSION

We believe that several of the proposed multiemployer plan disclosures are reasonable and would provide useful information to financial statement users. Much of the information required to satisfy these disclosures can be obtained through a plan's Annual Funding Notice, which is required by law to be distributed to every contributing employer. The remaining required information could be obtained through collective bargaining agreements or an employer's own bookkeeping. The disclosures of that information would be delivered to financial statement users in a useful and not misleading form. We recommend that FASB adopt the following disclosures related to an employer's participation in multiemployer plans:

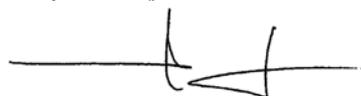
- a. The number of plans in which the employer participates.
- b. For individually material plans, the name of the plan(s).
- c. For plans required to adopt a funding improvement or rehabilitation plan, a narrative description of such plan, including the expected effects on the employer.
- d. A description of the nature and effect of any changes affecting comparability from period to period, including both of the following:
 1. A business combination or a divestiture.
 2. The rate of employer contributions for each period for which a statement of income is presented.
- e. A description of the contractual arrangement(s), including all of the following:
 1. The term of the current arrangement(s).
 2. For each future year covered by a contract, the agreed-upon basis for determining contribution(s).
 3. Any minimum contribution(s) required by the agreement(s).
- f. Amount of contributions for the current reporting period.
- g. Expected contributions for the next annual period.

Withdrawal liability estimates become relevant to an employer's financial position only when it is at least reasonably possible that a withdrawal liability will be assessed. A lower disclosure threshold would require an employer to disclose misleading information to its financial statement users. We urge FASB to maintain its current

disclosure requirement for potential withdrawal liability. That is, if it is reasonably possible that an employer will be assessed withdrawal liability, the employer must disclose the amount of the potential assessment.

We are grateful for this opportunity to comment on FASB's Subtopic 715-80 Proposed Accounting Standards Update. We would welcome the opportunity for further discussion on this issue. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, consisting of a horizontal line with a vertical stroke and a diagonal stroke extending to the right.

Michael Weber