



**CONSTRUCTION FINANCIAL MANAGEMENT ASSOCIATION**

*The Source and Resource for Construction Financial Professionals*

November 1, 2010

**Technical Director**  
**Financial Accounting Standards Board**  
301 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116  
(Via e-mail: director@fasb.org)

**Re: File Reference No. 1860-100, Proposed Accounting Standards Update–Compensation–Retirement Benefits–Multiemployer Plans (Subtopic 715-80):**

***Disclosure about an Employer’s Participation in a Multiemployer Plan***

Dear Director:

On behalf of the Construction Financial Management Association (CFMA), we respectfully submit the following comments in response to the Exposure Draft, *Disclosure about an Employer’s Participation in a Multiemployer Plan* (hereafter, Exposure Draft).

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 with feedback on this topic.

CFMA appreciates the efforts of the Board and its staff in preparing the Exposure Draft and for the opportunity to comment on the proposed principles.

**Understanding Construction Industry Regulations on Multiemployer Plans**

Before presenting our response, we believe it is essential that FASB understand the unique aspects of the construction industry and the resulting unique considerations the construction industry is afforded under the law. First, it is not uncommon for medium-sized and larger contractors to participate in several multiemployer plans (5, 10, or even dozens), most often dictated by the jurisdictions the contractor works in, as well as the breadth of trades employed directly by the contractor.

This is quite different from most other entities that typically participate in only one or a few plans. As a result, the cost of compliance for any new disclosure requirements will likely affect contractors exponentially, unless FASB provides a more streamlined solution for presenting information – a solution we specifically request that FASB consider.

Moreover, by operation of law, contractors can take advantage of what is known as the “construction industry exemption” from withdrawal liability – a unique status that no other U.S. industry holds. Broadly speaking, this exemption allows contractors to exit a plan without being assessed a withdrawal liability if certain requirements are met – most notably, the contractor may not continue working in that jurisdiction as a non-union contractor for a period of at least five years after withdrawal.

While there are legitimate business reasons that would preclude a contractor from exiting all of its multiemployer plans *en masse*, contractors have been known to very carefully manage their exits from certain plans that appear to be grossly underfunded, particularly when a plan relates to a geographic jurisdiction that is not essential to the contractor’s operations.

One of the reasons that contractors are afforded this unique consideration under the law is based on the fact that the construction workforce, as a whole, is highly transient. Many employees will migrate from one contractor to another, depending upon where the best opportunity is deemed to exist at a given point in time. In addition, contractors will also enter and exit jurisdictions depending upon where the best business opportunity is deemed to exist at a given point in time.

While no contractor, as a going concern, could realistically attempt to exit all of its multiemployer plans *en masse*, contractors do take advantage of the industry exemption in exiting trades/jurisdictions where the risk/reward scenario no longer makes economic sense, and are able to leave their potential withdrawal liability behind.

Any disclosures contemplated by FASB need to take into consideration the unique nature of the construction industry and the rules that uniquely apply to it.

### **Areas of Response**

We have organized our comments by responding to FASB’s questions below. However, our responses can be summarized into certain key concepts as follows:

- In the vast majority of the cases, it is highly unlikely that an event will occur that will cause a material liability. It makes little sense to disclose voluminous, difficult-to-assemble data for remote chances of occurrences.
- It simply doesn’t make sense to require voluminous data that will be used by very few financial statement users (and in some cases, no users), especially when that data does not increase usefulness and transparency.
- Disclosures that attempt to be precise may lead financial statement users to believe the data is more precise than it really is, which could easily lead to incorrect analyses of that data.
- The comment period for this proposed standard is much too short, particularly given the fact that the industry has never before experienced the velocity of proposed standards that could have such profound effects (e.g., revenue recognition, contingencies, leases, and multiemployer disclosures). It is a disservice to both FASB and financial statement preparers/users to stack so many standards affecting the construction industry into such a relatively short window of time.

### **Specific Comments**

Our primary objections relate to the requirement for more quantitative data, the usefulness of which is debatable. However, we don’t object to revisiting the qualitative data that would be required disclosures, since we do believe that underfunded retirement plans pose a grave danger to the economy.

We suggest the Board revisit the requirements for disclosing information that raises awareness of the issue, but do so in a way that is cost-effective and not likely to cause a financial statement user to reach an incorrect decision. We have included specific suggestions in our response to Q1 below, but we do believe that the comment period should be extended to at least January 15, 2011 and that the use of further public roundtables be considered to ensure that FASB and the construction industry have had a chance to fully interact on these very important proposed disclosures.

What is being proposed will not enhance the utility of information in the financial statements and, most likely, will only serve to create unnecessary confusion among financial statement users. We are not opposed to developing disclosure requirements that provide greater decision-useful information to the users of financial statements, but this standard, as proposed, will fall far short of that goal.

### **FASB Questions**

**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? Why or why not? If not, what changes would you suggest to the proposed amendments?

**CFMA Response:** We do not agree that the proposed quantitative and qualitative disclosures will result in more useful and transparent disclosures of an employer's obligations arising from its participation in a multiemployer plan for the following reasons:

1. Useful and transparent disclosures become more useful as the information underlying the disclosures becomes more accurate. There are several obstacles to obtaining timely and accurate information as specified in the proposed standard. Information that is dated clearly becomes less useful with age; and, in fact, based upon changing market conditions and a changing interest rate environment (affecting the discount rate used for measuring liabilities), the information will not only be stale, but could, in fact, be misleading.

We suggest that, rather than requiring voluminous quantitative data, the standard should focus on qualitative data, unless an employer has made the decision to embark on an action that would likely impose a liability that could be reasonably estimated under ASC 450 standards pertaining to contingent liabilities. The qualitative data required to be disclosed should be:

- The names and federal identification numbers of the plans in which the employer materially participates.
- 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 employers' obligations, if applicable.
- Whether the plan is currently in "endangered" or "critical" status, and whether the plan has entered into a rehabilitation plan in order to correct serious funding shortfalls. The Pension Protection Act of 2006, Public Law 109-280, issued guidance for determining endangered and critical status, and the IRS released guidance in Notice 2009-31 related to plans that are endangered or critical. These qualitative concepts can be applied to footnote disclosures as well.

2. From a legal perspective, it is debatable just what entity may be liable for underfunded plans. It stands to reason that an employer withdrawing from a plan, who is then assessed a liability, will likely contest that liability. Many people who have studied the legalities differ in their opinions about ultimate liability. Add to this debate the fact that the PBGC that insures most of these plans has shown a tendency to make funding contributions to insolvent plans (even when some participating employers remain solvent) and one could conclude that the employer may not be responsible. If the employer isn't responsible, no liability exists. Unfortunately, it will take many years for these legal uncertainties to be addressed.

We believe that there are very few financial statement users who might desire additional information – information that can be satisfied between the employer and the financial statement user requesting that information. It simply doesn't make sense to require voluminous data that will be used by so few users, especially when that data does not increase usefulness and transparency. Brief, qualitative information will alert an interested user that the employer does participate in these types of plans, and that user can then follow up with specific information requests from that employer.

**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?

**CFMA Response:** We do not believe disclosing an estimated withdrawal liability will provide users with decision-useful information if the withdrawal is not at least reasonably possible. In fact, it may cause the opposite to happen; that is, it may lead to a misapplication of that information.

If an event is remote, even the mere discussion of that event may cause financial statement users to wonder why it is being discussed in the first place. They might wonder, "If it's not reasonably possible, why is someone even mentioning it?" Under this line of reasoning, where would an entity draw the line in ceasing to disclose all possible undesirable events?

It simply makes no sense to expend time, effort, and cost to gather information related to events that are remote. Financial statement users will likely conclude that it's probably *not* remote because otherwise, the contractor would not have gone to those lengths to determine all that information. This will then lead to decision-making based on faulty reasoning.

**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?

**CFMA Response:** It is hard to quantify implementation costs in applying the proposed disclosures, although we believe an employer will have to go to great lengths to obtain it. We have heard reports from our membership that the cost to obtain information from the plans necessary to comply with the stipulated disclosures could range from as little as \$500 per plan to as much as \$5,000 per plan.

At this point, there is not enough standardization between plans (and in the format of information supplied) to know for certain what this cost will be. But, it is reasonable to believe that employers may spend \$1,500 per plan to obtain the needed information. For a contractor in 20 multiemployer plans, this now becomes a very real and legitimate expense, significantly increasing its financial reporting costs.

But, even in addition to the concerns over the cost of obtaining information, the timeliness of quantifying and disseminating the information leaves much to be desired. Construction companies and their financial statement users want their financial information issued on a timely basis, often within weeks of a contractor's year end, and hardly ever more than a few months after.

It will simply not be possible for the plans, the participating employers, and the required outside experts to accomplish this process in a timely manner for the latest plan information to be presented in a contractor's financial statements. That means that, most likely, *the MEPP new required disclosures will not be timely nor match the financial statement information they are presented with.*

Obtaining this information is beyond the control of contractors, and the timely issuance of their audit reports will not rest with outside parties. That alone brings into question the requested information's relevancy. It may be possible for a contractor to issue drafts of its audit reports with everything completed except the pension plan disclosures, but many sureties will not finalize bonding capacity until the final audit report is issued, and this will hamper bidding on jobs.

Further, the ability to audit this data is questionable. An auditor has the responsibility to gather evidence to support all information in the financial statements, including data in the footnotes. Significantly expanded quantitative and qualitative disclosures will increase audit costs, and will likely add to the difficulty of completing the audit in a timely manner.

As stated above, obtaining information from numerous plans presents real challenges. Many contractors perform work in numerous jurisdictions involving many multiemployer plans. Requiring the same information about each plan will compound the issues of timeliness and auditability. The cost to the employers will also rise as they pursue obtaining the data from each plan.

The above items are equally applicable to foreign plans.

**Question 4:** The Board plans to require that the amendments in the final Update be effective for public entities for fiscal years ending after December 15, 2010. Are there any significant operational issues that the Board should consider in determining the appropriate effective date for the final amendments?

**CFMA Response:** We believe the enactment date as proposed is very aggressive. Plan administrators will bear the primary burden of assembling the required information and disseminating it to the employers. It's already November 2010, and the standard has not yet been finalized, a process that will likely take several more weeks. In fact, it's possible that the enactment date could precede the date the standard is issued, which means there will be no time to comply. We surmise that plan administrators will need several months following any final issuance to make appropriate changes to their structures and systems in order to furnish the required information to the employers.

**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.

**CFMA Response:** We do concur with a deferral for nonpublic entities, and specifically for contractors. As stated earlier, many contractors participate in numerous multiemployer plans, and the time it will take for those entities to communicate with and acquire information from each of the plans will be significantly longer than normal. An effective date that is the same for public and nonpublic entities will impose a large burden on contractors.

**Question 6:** In addition to the deferral for nonpublic entities, should any of the provisions in this proposed Update be different for nonpublic entities (private companies and not-for-profit organizations)? If so, which provision(s) and why?

**CFMA Response:** Yes. We believe that private companies should be exempt from providing anything other than the qualitative information we have previously recommended. While we appreciate the need to inform public company investors about the risks that may not be fully reflected in a public company's financial statements, we believe that for nearly all private companies, its stakeholders have the ability through one-on-one dialogue to obtain any information needed in order to make informed decisions regarding the business. Many users of nonpublic financial statements will not need or use the proposed added quantitative information, and requiring this information for all nonpublic entities is more burdensome than the benefits obtained.

**Question 7:** Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's (SEC) requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.

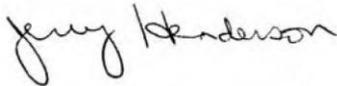
**CFMA Response:** Given the lack of publicly traded construction companies, this matter has no significant impact on our constituents and so we have not contemplated a response to this question.

### **Conclusion**

We sincerely appreciate the opportunity to respond to the Board's request for comments and look forward to continuing this process in order to help the Board achieve its objectives of creating a standard that results in increased transparency about an employer's participation in a multiemployer plan.

The Board should consider the unique aspects of the construction industry with regard to its involvement in multiemployer plans. Specifically, the large number of multiemployers plans involved and the costs to obtain quantitative data for each plan, the critical nature of issuing timely financial statements, the remote likelihood of a future liability being imposed, and the high chance for the information to be misleading affects the construction industry in such a way that quantitative data should not be required in the notes to the financial statements. The Board can accomplish its objective of increased transparency with enhanced qualitative data only.

Sincerely,



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