## November 1, 2010

Technical Director Financial Accounting Standards Board Norwalk, CT 06856-5116

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"

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter in response to the request for comments on the Proposed Accounting Standards Update, *Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80): Disclosure about an Employer's Participation in a Multiemployer Plan* ("Proposal") as released by the Financial Accounting Standards Board ("Board") on September 1, 2010.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Our members are both users and preparers of financial instruments. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

## **Background**

On September 1, 2010, the Board issued the Proposal which would amend U.S. Generally Accepted Accounting Principles ("GAAP") by requiring employers that participate in multiemployer defined benefit pension plans to provide additional information in the footnotes to their financial statements about these multiemployer plans. Currently, employers must disclose that they are required to make contributions to multiemployer pension plans and to report the contribution totals owed and the amount paid to those plans for the reporting period.

This Proposal follows an Exposure Draft, published in late July, that discusses employer accounting for "loss contingencies," including withdrawal liability associated with a multiemployer pension plan. The Chamber commented on that proposal stating that changing the reporting requirement for possible withdrawal liabilities for multiemployer plans would be unnecessarily burdensome and could have a substantial negative financial impact.

<sup>&</sup>lt;sup>1</sup> Proposed Accounting Standards Update, "Contingencies (Topic 450): Disclosure of Certain Loss Contingencies," July 20, 2010.

The stated purpose of the Proposal is to address a perceived lack of transparency regarding employers' participation in multiemployer defined benefit pension plans. In addition, the proposal states that there is concern that employers who participate in multiemployer plans are exposed to increased risks as a result of the recent economic downturn and the requirements of the Pension Protection Act of 2006 applicable to financially troubled plans.<sup>2</sup>

## **Introduction**

We support additional transparency. However, the proposed disclosures are generally overly burdensome and could potentially be misleading. Therefore, we are concerned that the Proposal may have the unintended consequences of misleading investors and overly burdening employers and the plans. One serious consequence could be to discourage new employers from agreeing to participate in multiemployer plans which would have a detrimental financial impact on the long term financial health of multiemployer plans

The most crucial concern, however, is the potentially negative financial impact for employers disclosing this information. As you are aware, the information included on financial statements is used to determine the credit-worthiness of a company. Some of the disclosures – particularly those pertaining to withdrawal liability – could be misleading and negatively impact an employer's ability to get appropriate financing either from banks or bonding agencies. In addition, even if an individual employer is not directly impacted, that employer may be indirectly impacted if other employers who participate in the plan suffer financial trouble due to the disclosure of this information.

Given the burdens that would be applied and the potential for unnecessary financial distress, we strongly urge the Board to revise the Proposal to tailor it more narrowly to achieve the intended purpose without creating the unintended consequences of the disclosure of misleading information and overly burdensome requirements.

## **Comments**

# The Board has Failed to Identify Investor Issues or Benefits

The mission of the Board is to establish and improve standards of financial accounting and reporting that foster financial reporting by nongovernmental entities that provides decision-useful information to investors and other users of financial reports.

The Board has failed to identify investor needs or issues that it is seeking to address with the Proposal and any benefits are unclear and uncertain at best. Although the Board states that it has consulted with investors and that these investors perceive benefits from the Proposal's requirements, it has not revealed which investors or even which categories of investors were consulted and those interests that supposedly are being addressed. A statement on investor consultation without transparency fails to credibly establish that a wide range of investor

<sup>&</sup>lt;sup>2</sup> Proposed Accounting Standards Update, "Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80)," September 1, 2010, Section BC2, p.13.

prospective were taken into consideration and leaves open the possibility that the Board is attempting to address only a narrow range of investor interests and doing so at the expense of all public company investors.

The current Proposal accordingly fails to satisfy cost-benefit and prudence standards. Such unjustified decision-making is wholly inconsistent with prudent financial reporting policy and is harmful to investors.

# The Proposal Create an Overly Burdensome Regime of Disclosures

In its current form, the Proposal creates a burden for employers because they will be required to ascertain and disclose information that may be disclosed in other filinfs or not in their control. It will also create a severe burden for multiemployer plans because they will be inundated with requests for information from employers. Compiling, calculating, and disclosing this information will not only be administratively burdensome but also very expensive – thereby, imposing additional stress on employers' resources. In addition, this burden and expense will not contribute to a greater understanding of the financial situation of the employer or the plan as the information may be misleading or in conflict with other reportable information.

Information Maintained by the Plan Would Be Difficult for the Employer to Ascertain. The nature of multiemployer plans is that the administrative and record-keeping duties for the plan reside with the plan itself. The employer makes contributions but is not responsible for the day-to-day operation or records of the plan. Therefore, there is certain information that is not readily available to employers. For example, quantitative information about the employer's participation in the plan, such as the number of its employee participants as a percentage of total plan participants disaggregated between active and retired participants, is not information that is maintained by the employer. Moreover, plans do not provide information about other participating employers or the number of active and inactive participants, nor are they currently required to do so. Consequently, disclosing this information would create an undue burden on the employer as well as the plan – both of which would have to create new record-keeping procedures to determine this information.

The Timing of Certain Disclosures is Problematic. In some cases, the information is available to employers but the timing of the calculation that is required by the Proposal is different from the normal timing of the calculations done by the employer or the plan. The Proposal would require the disclosure of 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. Plans are required to include this information on the Form 5500; however, a public company's financial statements are required to be filed within 60 days after their fiscal year end, while Form 5500s are not required to be filed until 7 months after the fund's plan year end (or 9 1/2 months with an extension). Therefore, the plan would be required to provide this information on a more rapid basis—which would create untenable costs burdens—or employers would be required to disclose outdated information in their financial statements.

Furthermore, the total assets and accumulated benefit obligations of the plan are not relevant in the context of disclosures about an employer and may create confusion and misunderstanding on the part of the investor. For example, an employer may have a very small percentage of participation in a very large plan. In such a case, an investor may misunderstand the disclosure and think that the total assets and liabilities disclosed in the footnote relate entirely to that employer.

The Proposal also requires the disclosure of an 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. Similar to the information discussed above, this information would come from the Form 5500. Therefore, the plan would have to calculate this information more rapidly or employers would be required to disclose outdated information in their financial statements.

The Disclosures Could be Excessively Lengthy for Employers that Participate in Multiple Plans. The Proposal states that separate disclosures are required for plans for which the fair value of assets is more than the liabilities, and for plans for which the assets are less than liabilities. It then goes on to indicate that the narrative disclosure that is required should be disaggregated for plans with significantly different risk characteristics or contractual commitments. The Proposal gives the example of separating multiemployer plans with funding improvement plans from those that do not. Providing this level of detail will be overly burdensome, especially with respect to employers that are relatively small and/or participate in multiple plans. For example, an employer in the construction industry may hire people in multiple trades – ironworkers, carpenters, steelworkers, roofers, electricians, etc. – for which the employer is required to contribute to separate plans. In addition, workers may be hired from different regions or different states which would further increase the number of plans in which an employer participates.

We recommend that the detailed disclosure be required only for those plans that are individually material and that any other plans be aggregated into an "all other" category. The individual plans for which specific detail would be required should be the same ones disclosed under paragraph 715-80-50-1B b., which indicates that employers only provide the names of individually material plans.

The Proposal Does Not Adequately Address Employers with Multiple Bargaining Units within One Plan. The Proposal does not provide any exceptions or aggregation provisions for situations in which an employer has multiple collective bargaining units that contribute to one multiemployer plan. It would be overly burdensome to require detailed disclosure of certain items, such as the terms of benefit payments or the way contribution amounts are calculated, for each individual collective bargaining unit. One option may be to discuss ranges for the collective bargaining units that contribute to the same multiemployer plan. However, that information may be less relevant if the terms are very different between the individual collective bargaining units.

# Withdrawal Liability Calculations are Misleading and Unnecessary for Employers that are Not Withdrawing from a Plan

We view the disclosure of a withdrawal liability estimate as extremely misleading since it is a liability that does not exist. The rules regarding multiemployer plans are so complex that it

would be extremely difficult to describe the disclosed withdrawal liabilities in a way for investors to understand that it is not a true liability.

The Proposal would require the disclosure of withdrawal liability at a particular point in time. If an employer has no present intention of withdrawing, the disclosure would be misleading because it does not take into account future actions the plan could (or may be required to) implement to reduce its underfunding (such as reducing benefits, adjusting contribution rates, etc.). Consequently, any increased transparency gained by the disclosures would be significantly outweighed by the confusion and misapplication of the disclosed information that is likely to occur.

Withdrawal Liability Estimates are Highly Variable, Particularly When There is Not a Reasonable Possibility of Withdrawal. Withdrawal liability is based upon a myriad of assumptions including interest rates, mortality rates, market returns, and withdrawals by other employers. Even at the point of withdrawal from a plan, there are often disputes between the plan and the employer over the assumptions to be used. As a result, these values are often negotiated rather than being a cut-and-dry calculation.

Furthermore, the information used to calculate the withdrawal liability may not be consistent. In many cases, a plan will provide only template data to each employer, and the employer is required to estimate its own withdrawal liability. Given the variance in assumptions used, there could be inconsistent reporting by employers participating in the same fund.

Disclosing Withdrawal Liability Without the Reasonable Possibility of Withdrawal Will be Misleading and Have an Undue Negative Impact. Withdrawal liability can swing significantly from year to year based on investment returns, participation levels and active/inactive participant ratios. If there is not at least a reasonable possibility that the employer will withdraw, disclosure of withdrawal liability in any one year would be misleading since the amount could be materially different at the future time at which an actual withdrawal occurs.

In addition, a withdrawal liability estimate may be wildly disproportionate to the rest of the balance sheet. This is especially true with respect to the appropriate discount rate to be used. The discount rate used by the actuary to value the plan on an ongoing basis may be significantly different from the rate used to determine a current withdrawal liability. In the case of a defined benefit plan, typically the projected benefit obligation associated with the plan is much greater on termination basis than it would be on a going concern basis. As a result, the aggregate of the withdrawal liabilities that are being calculated for each of the plan participants could be significantly higher than the current funded status of the plan. An employer who discloses this information may receive negative backlash from credit agencies, banks, and bonding agencies which would be completely unwarranted.

Consequently, required disclosure of withdrawal liability estimates could severely mislead readers of financial statements because, for most employers, this will not be a true liability since the likelihood of it actually being incurred is so small. Moreover, the estimate will not give any useful information about the plan or the employer as an on-going concern.

# Certain Disclosures Apply to Multiemployer Plans Generally and Should Not Be Required as Individual Disclosures

Disclosure of the following items would apply to every multiemployer plan and, therefore, there is no benefit in requiring this disclosure by individual employers.

- 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.
- The consequences the employer may face if it ceases contributing to the plan(s).
- Known trends in contributions, including the extent to which a surplus or deficit in the plan may affect future contributions.<sup>3</sup>

Even if the employer just copies this generic information onto its disclosure, this redundancy is completely unnecessary. Once an employer states that they participate in a multiemployer plan, a reader may then look up any generic information about a multiemployer plan that he/she deems necessary. Moreover, stating the same information for multiple plans will increase the length of the disclosure without adding any substantive information about the financial status of the employer or the plan.

# Disclosure of Contractual Arrangements May Create Competitive Harm

The Proposal requires a description of the contractual arrangement, including: the term of the current arrangement; for each future year covered by a contract, the agreed-upon basis for determining contribution; and any minimum contribution(s) required by the agreement(s). We believe these disclosures may cause competitive harm because an employer's competitors (especially those that do not participate in multiemployer plans) will obtain more detailed information about the employer's labor costs. In addition, an employer's contractual arrangements likely vary across labor unions, and the disclosures could provide a union with information about other union agreements that they can use in future negotiations with the employer.

In addition, for employers with multiple contractual arrangements (i.e., collective bargaining agreements) that participate in multiple multiemployer plans, the Proposal would result in lengthy, detailed disclosures. The potential usefulness of this information to investors would not justify the time and resources it would take to prepare and update the disclosures. Again, as with the loss contingency proposal discussed earlier, public companies are being asked to disclose prejudicial information that may be harmful to the interests of investors.

## The Proposed Disclosure Should Not Apply to Retiree Health Plans

The Proposal states that these disclosures are required with respect to retiree health obligations under multiemployer plans as well as pension obligations. However, multiemployer health plans generally have no equivalent to withdrawal liability or minimum funding requirements.

<sup>&</sup>lt;sup>3</sup> Known trends may actually differ between funds, although the factors that could cause trends would be consistent across funds.

Moreover, there is not the same liability factor for retiree health plans as there is for pension plans. In most cases, when an employer is not able to maintain the liability associated with a retiree health arrangement, the arrangement is changed to make it more manageable. Consequently, the rational for requiring disclosure of financial information of pension plans does not at all apply to retiree health plans. As such, we urge the Board to remove retiree health plans from the Proposal.

#### **Additional Clarifications are Needed**

The Proposal states that an employer must disclose "whether the employer is or is not represented on the board of trustees of the plan(s) or a similar body." However, the trustees, whether labor or management, have a fiduciary duty to represent the best interest of the beneficiaries of the plan, not the union or employer. Each side has a "collective voice" for the interests of labor and management in designing and operating the plan, and thus has general "representation." There should not be any specific representation of an employer's interests (or a union's interest) by a trustee. Presumably, the disclosure is meant to identify employees of the employer that may trustee the plan. If so, the rule should be reflected as such.

# **Appropriate Disclosures**

We believe the following additional disclosures would be useful and appropriate to include in the footnotes to the financial statement:

- o The number of plans in which the employer participates.
- o For individually material plans, the name of the plan(s).
- O Any funding improvement plan(s) or rehabilitation plan(s), including the expected effects on the employer.
- o Amount of contributions for the current reporting period.
- o If a company has decided to termination participation in a plan and a withdrawal liability has been assessed, the amount of the withdrawal liability assessment on an annual basis.

# The Proposal Must be Considered in Conjunction With Other Proposed Accounting Standards

The Proposal has been put forth in a challenging time for the revision of financial reporting policies, as well as regulatory rule-making related to the implementation of the Dodd-Frank Act. The Proposal is being considered as the Board currently has a number of other large revisions to accounting standards including:

- 1) Financial Instruments;
- 2) Leases;
- 3) Comprehensive Income;
- 4) Insurance Contracts,
- 5) Revenue Recognition;;
- 6) Fair Value Measurement;
- 7) Financial Statement Presentation; and
- 8) Financial Instruments with Characteristics.

This list of course does not include various Public Company Accounting Oversight Board projects such as Confirmations, Risk Standards, Audit Committee Communications, the Securities and Exchange Commission's IFRS Work Plan, or any of the regulatory implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Simply put, companies have limited resources to devote to complying with additional disclosure obligations. Funds used to comply with these rules mean fewer resources for a company to use in expanding its business and creating new jobs—something that must take priority given our continued economic and unemployment crisis.

Regulators and standard setters must recognize that resources available for compliance are not infinite and prioritize among the various new obligations that they wish to impose, in the same way that business must prioritize in choosing among competing demands and individuals must do in setting their household budgets.

In light of this backdrop, we must again raise the lack of an investor interest that is being addressed, the failure to conduct a cost benefit analysis, and the enormous costs and burdens that the Proposal will bear. Accordingly, we would request that these costs and implementation burdens be considered in conjunction with the other accounting standard revisions listed above.

### Conclusion

We urge you to reconsider the Proposal in its current form. As currently written, the Proposal will serve only to burden contributing employers and multiemployer plans while providing only minimally substantive information at best and misleading and confusing information at worst.

We also encourage you to coordinate with the Department of Labor and Internal Revenue Service which have jurisdiction over the financial disclosures for ERISA covered retirement plans, including multiemployer defined benefit plans. A number of changes have been made to the Form 5500 to increase the transparency of financial information. If the Board believes that additional disclosures are warranted, we believe it would be best to work with those agencies.

Thank you for your consideration of our comments. We look forward to further discussions with you on this very important issue.

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