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AMERICAN ACADEMY of ACTUARIES

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November 1, 2010

Technical Director  
File Reference No. 1860-100  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116  
director@fasb.org

Re: Disclosure About an Employer's Participation in a Multiemployer Plan

Dear Sir or Madam:

The Multiemployer Subcommittee of the American Academy of Actuaries<sup>1</sup> would like to thank the Financial Accounting Standards Board (FASB) for the opportunity to provide comments on the proposed updates to disclosures required for employers that participate in multiemployer plans, contained in Subtopic 715-80, *Disclosure about an Employer's Participation in a Multiemployer Plan*. These comments are based on experience and insights gained from many years of working with the plans themselves and the employers who participate in the plans.

The Subcommittee generally agrees that users of financial statements should have access to additional information related to the defined benefit multiemployer pension plans in which a company participates. This information is most useful if provided in a uniformly accurate and timely manner. We believe, however, that some of the information that would be required by this proposed standard would be better obtained through the information required to be made public by the plans, rather than through employer disclosure.

A key objective of the exposure draft is to promote a better understanding of the potential for a multiemployer plan to affect future cash flows. We strongly believe, therefore, that disclosure focused on the effect of a company's participation in a multiemployer plan will have on the company's projected cash flows is far more useful than disclosure of certain plan liabilities and assets, which could include potentially misleading and outdated withdrawal liability information.

We are also concerned about the effective date of these requirements for public companies. We recommend the effective date be delayed at least one year to allow companies and plans the time needed to prepare to comply with these or similar requirements.

Please note that we have not responded to all questions posed to respondents in the exposure draft. We have limited our responses, instead, to those for which we believe the actuarial profession provides a unique perspective or has particular knowledge related to a specific topic addressed. Our responses to Questions 1 through 4 follow.

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<sup>1</sup> The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

**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?*

Our response to Question 2 describes why the variability in the determination of withdrawal liability is so great as to render almost useless a simple recitation of the most recently available withdrawal liability amount. If FASB strongly believes that "exit" information needs to be disclosed by a participating employer that has expressed no interest in terminating that participation, then we suggest that disclosure of the potential withdrawal liability payments (usually due on a quarterly basis) would allow the user of the financial statement to incorporate this hypothetical withdrawal information into an analysis of the company more effectively than the disclosure of the nominal amount of the withdrawal liability.

While we applaud the flexibility provided in the Accounting Standard Codification Paragraph 715-80-50-1A regarding the aggregation of plans, we do want to note that this will diminish the level of comparability in financial statements from one company to another. In addition, the "zone" status of a plan can change from year to year, leading some participating employers to consider a particular plan in one status and other companies—participating in the same plan—to disclose a different zone (depending on the relationship between the companies' fiscal year and the plan year).

We also are concerned that the sheer volume of disclosure information proposed will discourage all but the most diligent user from extracting the most important portions. As drafted, the footnote information for a single plan could require two pages of text. For a large company that participates in several dozen multiemployer plans, even with aggregation, the footnote information just for these plans could result in 50 or more pages of additional text. In our comments below, we attempt to identify the information that could best be eliminated from the footnote because its usefulness is limited or because it is available from other sources.

With regard to the specific items listed in Codification Paragraph 715-80-50-1B, we have the following comments and observations (numbered as in the Accounting Standards Update):

- b. Names of individual material plans often are similar and, in some cases, the employer may refer to the plan in some colloquial manner that is not the official plan name. We suggest the disclosure ensure that the plan is identified correctly.
- c.2. We do not believe the manner in which plan benefits are determined is useful information for the financial statement user and suggest that this item be limited to a defined benefit / defined contribution distinction.
- c.5. The disclosure of funding improvement or rehabilitation plans, for a U.S. plan that is classified as endangered or critical, should include items that will affect cash flow, including changes in contribution schedules for the period of the funding improvement or rehabilitation plan. The plan is required to provide this information to participating employers on a timely basis, within 30 days after a plan is adopted. Disclosure of "remedies being considered by the plan(s)," however, is inappropriate for several reasons. First, such remedies would be known only to an employer who is represented on the board of trustees, but in that case the individual could be constrained as a plan fiduciary from publicly disclosing those deliberations. Second, many remedies are considered by the board and discarded as either ineffectual or impractical. Finally, disclosure of such remedies and the impact on the company could compromise the position of the company

and/or the union in subsequent collective bargaining sessions.

We suggest that the disclosure be limited to the following: information related to the last reported zone status of the plan (regularly conveyed to all employers via a notice statutorily required by the 120th day of the plan year); the general contours of any formal funding rehabilitation plan or improvement plan that has been adopted by the plan trustees and presented to the bargaining parties (primarily, the range of choices available to those parties that relate to future contribution requirements); and any specific measures that have been agreed to by the employer in collective bargaining as a result of the remedial plan. The summary of the rehabilitation plan or improvement plan is included in the plan's annual report filed with the Department of Labor and, in certain situations, also may be obtained directly from the plan upon request.

- e. Asset and accumulated benefit information is readily available from the plan's financial statements. Requiring each employer to report this is overly burdensome and redundant.
- f. While an employer will know the amount it contributes to the plan, it will not know the contributions of other employers. Total contribution information is obtainable from the plan financial statements. We suggest the disclosure be limited to the contributions required to be made to the plan, along with an indication as to whether any of those contributions were not made and are considered delinquent by the plan.
- i. Information related to the number of retired participants that a particular employer has in a plan is not likely to be available for several reasons. First, many plan participants work for more than one employer within a multiemployer plan. Assignment of a particular retired participant to a specific employer generally is not needed for the plan to operate properly and there is no standard methodology for the plan to assign an employer to a participant, whether or not retired. Second, this information is of little use to the users of the company's financial statements since the existence of retired participants of a particular employer will have no impact on the plan's future contribution requirement or other cash flows. Finally, since it is the plan—not the employer—that must maintain contact with the retired participant, the company generally will not know which of its former employees are still receiving plan benefits.

An employer's influence on plan policy and the consequences of its participation are determined mostly by whether it is directly or indirectly represented at the plan trustee level, the relative size of its active employee population within the plan and its resulting contribution requirement as a percentage of the total. We suggest the disclosure required by the proposed update should be limited to these quantitative measures.

- m. Please see our response to Question 2 for more detail on withdrawal information. As indicated above, we suggest disclosures related to withdrawal or potential withdrawal from a multiemployer plan be based on potential cash-flow requirements rather than liability amounts.

**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?*

While information regarding cash flow implications of multiemployer plan participation is useful, the disclosure of estimated withdrawal liability amounts, which are likely to be outdated, can be misleading. The proposed update calls for the disclosure of funding improvement or rehabilitation plan information. That information is objectively determinable, as compared with withdrawal liability estimates that can vary significantly from year-to-year.

For a variety of reasons, disclosing withdrawal liability could cause a significant lack of comparability among employers. For example, the triggers for incurring withdrawal liability under plans in certain industries, such as construction and entertainment, differ greatly from the triggers for plans in other industries. It is quite rare for withdrawal liability to be automatically calculated for employers in a multiemployer plan; rather, it is calculated only upon formal request by the employer. Calculation of withdrawal liability often is not based upon the same assumptions as are used for the annual actuarial valuation, so separate calculations would be required in many instances. Requiring a multiemployer plan to make these calculations for each of its contributing employers (which can be in the hundreds or even thousands) is a major and costly task.

Any disclosure of withdrawal liability would be based on information that is a minimum of one year out of date, and therefore applicable to an event that no longer can occur. Some employers also may have available more current information than others, depending on the plans' fiscal years vs. the employer's fiscal year. The liability measurement dates could vary considerably among employers having the same fiscal year. Most importantly, the levels of volatility in investment markets can cause even the most recent estimates to become outdated—especially for the many plans that use market-based discount rates to determine vested benefit liabilities—while other plans use dampening techniques to reduce the effects of investment volatility. The law only requires disclosure of the amount if the employer had withdrawn the prior year. In today's volatile environment, this likely will be quite misleading. For many funds, withdrawal in 2008 meant no withdrawal liability. In 2009, it meant large withdrawal liability. And withdrawal in 2010 meant a smaller liability (while in many others that use market-based liability measures, the 2010 amount is far larger than in 2009). These factors could result in an employer providing misleading and/or outdated information to users of financial statements. A company that may have been subject to withdrawal liability in the prior year could have no obligation for the year in which the disclosure actually is being made.

In addition, the users of the financial statements may tend to view the withdrawal liability figures as being comparable to the unfunded pension liabilities that currently are part of the financial reporting for companies that sponsor single-employer plans. The significant differences that exist between multiemployer and single-employer plans, however, make this comparison highly misleading. Any underfunding that exists in a single-employer plan represents a distinct cash outlay that the company will be required to make in the near future. In contrast, contributions to multiemployer plans typically represent an allocation of a total wage package. In many instances, the size of the wage package is completely unaffected by the condition of the pension plan. Instead, the underfunding typically is addressed through concessions in the bargaining package (e.g., lower wages, lower pension accruals, reductions in other benefits such as health and welfare benefits).

When a multiemployer plan is underfunded, the bargaining parties generally address the problem by allocating a larger share of the total wage package to the pension plan—and by reducing the benefit

accruals in the plan prospectively. In cases of severe underfunding, more drastic measures may be taken such as the retroactive elimination of ancillary benefits (including certain “adjustable benefit” subsidies under the rules for critical status plans) and the diversion of money from participants’ paychecks. Only when the underfunding is so severe that these measures are inadequate do the sponsoring employers increase the total wage package for the specific purpose of funding the pension plan. While the users of the financial statements therefore are likely to view the withdrawal liability figures as distinct future cash outlays of the sponsoring employer, this view simply is not correct in most cases.

A second area of difference between multiemployer plans and single-employer plans is relevant to this question. When a single-employer plan is underfunded, it represents a liability of the sponsoring employer, and when the plan is overfunded, it represents an asset of the sponsoring employer. In contrast, withdrawal liability is always expressed as a liability—never an asset. The potential withdrawal liability from an overfunded plan generally is zero, and never a negative number that would represent an asset. In this way, the users of the financial statements are accustomed to seeing single-employer plans generate either an asset or a liability on the financial statements. Showing withdrawal liability on plan sponsors’ financial statements, however, conveys only the downside associated with underfunded plans and never the upside associated with overfunded plans. This inequity is an additional reason why it is inappropriate to require the disclosure of withdrawal liability information.

Another significant difference is that in a single-employer plan, the employer ultimately is responsible for the full liability. An employer that withdraws from a multiemployer plan may have liability effectively limited by the payment schedule under ERISA Section 4219(c). As a result the true liability for a withdrawal may be far less than the liability reported by the plan. In some situations, companies and plans have negotiated a settlement of the withdrawal obligation at, for example, 80 cents on the dollar. This further muddies the validity of the disclosure.

As a result of the special definition of withdrawal that applies to the construction industry, an employer in that industry incurs no withdrawal liability if it goes out of business or otherwise ceases to do work in the jurisdiction of the plan. Similar special rules apply to certain other industries. The reader of the financial statement is unlikely to understand that any withdrawal liability shown on the statement virtually disappears in the event, for example, of liquidation, while unfunded liability for a single-employer plan remains.

A far more useful and timely indicator of employer liability would be to disclose the employer’s known contribution obligations for the current year and years beyond that, including contributions required under the same contribution schedule(s) that was/were in effect for the prior year. A disclosure of whether the contributions have been or will be modified as a result of adoption of (or annual updates to) a Funding Improvement Plan (Endangered Status Plans), a Rehabilitation Plan (Critical Status Plans), or newly negotiated bargaining agreements also could be disclosed. This information is much more current in nature and provides a fair representation of expected cash flow requirements to the plan from the employer.

For employers that have already incurred withdrawal liability (or for which that is imminent), the information about the liability obviously should be disclosed, as is currently required under Topic 450: *Disclosure of Certain Loss Contingencies*. This information might include not just the total estimated or actual withdrawal liability, but also the amounts of statutory payments required from the employer to the plan, and the period over which these payments are required to be made.

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

We provide an analysis of the estimated cost for each material plan that an employer sponsors:

(1) Cost of withdrawal liability estimate—in our experience in the U.S., typical charges per employer per multiemployer plan—are a few thousand dollars. But the data provided will be two or more years old relative to the balance sheet date. Plans are required by law to provide the estimates; the administrator, however, has six months from the request to provide the estimate, and the estimate is for the *prior* year, which in turn represents the employer’s share of the unfunded vested benefits at the end of the second prior year. Although the cost of individual plan estimates is not large, the cost for an employer to assemble the required information for tens or hundreds of plans around the world could be quite substantial.

For example, a plan must respond to a request made on July 1, 2010, for a calendar year plan no later than January 1, 2011—as a practical matter, the minimally acceptable date for most companies’ calendar year-end financial statements. The response to that request generally would be the withdrawal liability as if the employer withdrew in 2009, because the 2010 determinations are unlikely to be available at the time of the request. This could mean that the employer’s share of the unfunded vested benefits as of December 31, 2008 is the best information available—applicable to withdrawal in 2009. In this case, a December 31, 2010 financial statement would thus include a disclosure based on data as of December 31, 2008, related to a hypothetical event (withdrawal) in 2009 that did not actually occur. We believe that the cost of preparing such a disclosure far exceeds the usefulness of the information.

In many cases, the fiscal year of the multiemployer plan will not coincide with the fiscal year of the company—which could make the numbers even more out-of-date in some cases. (Withdrawal liability numbers only will be available as of the fiscal year-end of the plan.) In most cases, the company has relatively limited leverage to “force” the plan to provide what the company might need for its financial statements. We are not in a position to speculate on what voluntary arrangements might arise or what the costs would be for more up-to-date analyses or faster turnaround. We note, however, that a relatively limited number of actuaries would have the expertise to develop such figures, and getting access to those actuaries might prove difficult in some situations.

In brief, the nominal withdrawal liability is not a statutory obligation of the company, generally is not calculable by the company without the cooperation of the fund, can vary dramatically from year to year, and is available only as a counter-factual hypothetical with a significant lag time. By contrast, our suggestion to focus on the annual withdrawal liability payments (which are the only statutory obligation of the company) provides numbers that are (relatively) easily calculable by the company without having to rely on the pension plan, do not tend to change dramatically from year-to-year, and are readily available on a timely basis under the full control and direction of the company.

(2) Information listed in draft amendment section 715-80-50-1B, including those items discussed in Question 1—Fees for a qualified outside consultant (assuming one were available) to process all this information and prepare a summary likely would be tens of thousands of dollars per material plan.

We question whether the benefit gained from the withdrawal liability disclosures and certain information listed in Section 715-80-50-1B is worth the significant investment it would take to prepare them, especially given the tenuous relationship between those disclosures and the company’s expected future cash flows.

**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?*

Several significant operational issues should be considered in determining the appropriate effective date for the final amendments. While some companies already have done much of the work that will be required, many others have not yet begun the process of centralizing data regarding multiemployer plans and will need significant lead time to provide the required information. We believe that most companies have not yet begun this process and will need **at least one year** to prepare to provide this information. In the case of participation in plans that do not respond quickly to requests, the time required may be even longer.

In many companies, management data regarding multiemployer plans is decentralized. It is common for a company to participate in many plans but have no centralized list of all of the plans. Many employers, particularly large employers in unionized industries, may participate in dozens of multiemployer plans with responsibility for “managing” the relationship with these plans handled at the local level. Even after a list of plans is gathered centrally, making the list usable often requires a significant time commitment. For example, bargaining agreements could refer to multiemployer plans by an obsolete name that was changed many years ago as a result of subsequent plan mergers. Before usable financial data can be gathered, the list of plans needs to be corrected to map the names in historic bargaining agreements to current names. Once the plan names have been determined, the plans often have difficulty in determining which contributing employers are part of the controlled group. This is complicated by the fact that a plan might have an employer listed under a corporate name that hasn’t been used for many years. We have seen the process of determining a usable list of plans—and then requesting data from those plans—take many months for a company to accomplish.

Once the company has assembled the list of multiemployer plans and requested data from the plans, each plan may take up to 180 days to respond to such request. While many plans respond more quickly, others take the full 180 days allowed by law (or, in some cases, even longer). Critical data provided by the plan could be inaccurate. For example, if one or more entities were acquired in asset sales with an agreement under ERISA Section 4204, it is common for the plan incorrectly to include contributions from years that would be excluded under Section 4204 and thus overstate the withdrawal liability—possibly significantly. A careful review of data provided by the plan often is required to ensure that the correct entities and contributions are included in the calculation.

The collection and processing of the data outlined in the exposure draft would require a great deal of time by people familiar with the technical nature of these plans and further time to ensure relative completeness and accuracy. Companies that participate in a large number of multiemployer defined benefit plans (some companies contribute to more than 100 such plans) probably will need to add and/or train staff to prepare this information. Companies may wish to rely on an outside consultant to assist in this process (usually an experienced multiemployer actuary), although, we believe the current availability of such outside resources is limited.

Most multiemployer plans similarly do not have the staff available to respond to the volume of requests that this amendment would produce. Some large plans have hundreds or even thousands of contributing employers. To handle data requests would require a significant expansion of staff at a time when these plans are financially constrained. Significant lead time will be needed for the plans to add and train such staff.

We therefore recommend that the new disclosures be required no earlier than the year-end disclosure fiscal years ending after December 15, 2011, and ask that the FASB consider a first reporting deadline of either June 15, 2012 or December 15, 2012. We would be supportive, however, of the usual permissive early adoption.

The Multiemployer Subcommittee appreciates the opportunity to provide input to the FASB on this important issue, and would be happy to discuss any of these items further. Please contact Jessica M. Thomas, the Academy's pension policy analyst (202-785-7868; [thomas@actuary.org](mailto:thomas@actuary.org)) if you have any questions or would like to discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Eli Greenblum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eli Greenblum, MAAA, FSA, EA, FCA  
Chair, Multiemployer Subcommittee  
American Academy of Actuaries