NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, DC 20006 • PHONE 202-737-5315 • FAX 202-737-1308
ON THE WEB AT: WWW.NCCMP.ORG E-MAIL: NCCMP@NCCMP.ORG

NCCMP ISSUES PAPER

CHANGES PROPOSED BY THE FINANCIAL ACCOUNTING STANDARDS BOARD (FASB) TO THE ACCOUNTING STANDARDS GOVERNING DISCLOSURE OF POTENTIAL WITHDRAWAL LIABILITY

September 2, 2010 - Yesterday, the Financial Accounting Standards Board (FASB) issued its much anticipated Exposure Draft on *Compensation – Retirement Benefits – Multiemployer Plans (Subtopic 715-80).* FASB has invited all interested parties to comment on this document, with a comment deadline of November 1, 2010. This exposure draft overlaps with the Exposure Draft on *Contingencies (Topic 450) - Disclosure of Certain Loss Contingencies*, which was issued on July 20, 2010 and has a comment deadline of September 20, 2010. A simple explanation of the two proposals would be that the *Loss Contingencies* statement (Topic 450) revisits the current standard defining under what conditions an employer would need to disclose information relative to any potential withdrawal liability it may face, while the more recent *Multiemployer Plans* draft (Subtopic 715-80) represents a dramatic expansion of these rules and imposes sweeping new requirements that detail over a dozen new categories of information which all employers that contribute to multiemployer plans must disclose. When taken together **these new rules have serious implications for employers that contribute to defined benefit pension plans and for the plans themselves**. This *Issues Paper* will describe the proposals and identify a number of concerns associated with their implementation.

Background

The stated reason the FASB believes these additional disclosures are required is to provide the end users (primarily analysts and investors) with sufficient information to make informed decisions about the potential liabilities of the companies in which they are considering investing. With the very pension plans to which these employers are contributing comprising one of the largest blocks of institutional investors, we understand and support their objective; however, we have serious concerns that the specifics of these proposals will not only fail to provide investors with current and reliable information on which to make investment decisions, the information being proposed for inclusion is likely to be misleading, causing investors to shy away from providing essential capital to financially sound companies.

It should also be noted that the International Accounting Standards Board (IASB) has also issued an Exposure Draft on *Defined Benefit Plans – Proposed Amendments to IAS 19*, for which the comment period ends on September 6, 2010. These two standard setting organizations have expressed their intent to "harmonize" global accounting standards in the next few years, a proposal that has been publically endorsed by the Securities and Exchange Commission (SEC) and Treasury Secretary Geithner. The NCCMP is in the process of drafting comments in conjunction with three other major benefit advocacy organizations in the U.S. and Europe in response to this proposal.

Loss Contingencies

What must companies currently disclose regarding contingent withdrawal liabilities?

The NCCMP has also begun drafting comments in response to both the *Loss Contingencies* and *Multiemployer Plans* exposure drafts. Regarding the *Loss Contingencies* Exposure Draft (Topic 450), the sole impact on multiemployer plans is the determination of the threshold for when contributing employers must disclose potential withdrawal liability. The current standard only requires disclosure when there is a reasonable probability that the liability will be incurred (that is, that the employer will withdraw from the plan and the plan will assess withdrawal liability).

What is being proposed?

It is clear from the introduction to this document that it is intended to expand the criteria under which a company is required to disclose potential withdrawal liability assessments and introduces the concept of severe impact as a new criterion for determining when disclosures will be required. As it is currently worded, various readers have interpreted this Exposure Draft in very different ways. Unfortunately, the more conservative reading would require employers with only a "remote" chance of incurring withdrawal liability to disclose it in the footnotes to their financial statements. As they would read the standard, all companies that participate in multiemployer plans must disclose their potential withdrawal liability if there were even a remote possibility such liability could be assessed or if such an assessment could have a severe impact on the company. Our comments on this exposure draft will focus on ensuring that the criteria for determining when this disclosure is necessary are both clear and that they preserve the reasonable and probable standard of the current rules. We will also encourage FASB to limit this requirement to instances where a withdrawal is either under way, or is reasonably anticipated in the near future.

Reporting Withdrawal Liabilities

What must employers disclose under existing standards?

Companies are currently required to disclose only their contributions to multiemployer plans, unless the "reasonably probable" standard regarding the likelihood of withdrawal from a given

plan is met. If the withdrawal standard is met, they must disclose the estimated withdrawal liability. This amount is either determined by the plan, or in some cases by the employer by applying a formula and basic information provided by the plan to information at the employer's disposal.

What is being proposed?

The new *Multiemployer Plans* Exposure Draft (Subtopic 715-80) would greatly increase the amount of information that companies participating in multiemployer plans must routinely disclose in their financial statements. The specific information that companies would be required to include in their financial statements for each multiemployer plan in which they participate includes, but is not limited to:

- The amount that is required to be paid upon withdrawal from the plan, as of the most recent date available;
- A description of the risk under which the company can be liable to the plan for other participating employers' obligations;
- A description of any rehabilitation or funding improvement plans either in effect, or under consideration;
- Total assets and accumulated benefit obligations of the plan;
- Percentage of the company's contributions relative to the total contributions to the plan;
- Percentage of the company's employees covered by the plan;
- Percentage of the active and retired participants of the plan employed by the company;
- Future trends in contributions, if known, including the extent to which a surplus or deficit may affect future contributions; and
- Description of the contractual agreement that govern the contribution rates.

Discussion

We believe that there are many problems with these proposed requirements. To begin with, the sheer volume of material required to comply with these disclosures will place an unreasonable burden on employers, particularly those that participate in a large number of multiemployer plans. The proposal will also place a large burden on the plans, which may be required to perform withdrawal liability calculations for each and every employer on an annual basis. Additionally, the costs of preparing this information on this scale will dwarf expenditures for similar determinations under existing standards. In the examples attached to Advisory Opinion 2001-01A, the Department of Labor determined that the costs of preparing similar estimates for single employer plans under FAS 87 and 88 are inappropriate for the plan to pay and that they must be borne by the employers. Inasmuch as these calculations are analogous in that they are not services required for the sole and exclusive benefit of plan participants, but are financial disclosures for the employer, we have asked the Department for clarification of whether these costs are to be billed to the employer requesting the information.

The FASB has indicated that they have no intention of establishing industry specific rules, yet the statutory framework governing withdrawal liability in the construction, entertainment and mining industries injects such variation into the process that to disregard the effect of industry specific withdrawal liability rules in imposing a "one-size-fits-all" standard makes this information largely useless with respect to these industries. Aside from the practical considerations, the information required by this exposure draft will be highly misleading to readers of the financial statements. In most cases, the most recent available withdrawal liability estimates will be more than a year out-of-date when the financial statements are published. Given the highly volatile nature of the financial markets, this information will not provide a useful understanding of the current position of the plan.

The effect of these industry specific rules is that many if not most employers in these industries will avoid such liability altogether or, at very least, reduce to a small percentage the number of withdrawals that actually lead to an assessment. In other industries, *de mimimis* rules can eliminate any assessment below $50,000 and moderate those between $50,000 and $100,000. Additionally, the 20-year cap on withdrawal liability payments combined with the plans' desire to receive up-front payments and the current priority in bankruptcy (that of a general unsecured creditor) all mean that withdrawing companies rarely pay the full assessment amount. Yet the proposed disclosures make no consideration for these industry specific rules, nor do they provide blanket exemptions under which these liabilities may be disregarded. As a result, companies that are already struggling to obtain credit lines and bonding in a historically difficult environment are likely to suffer.

We are also concerned about the highly speculative nature of several of the disclosure items. While it is appropriate to ask contributing employers to disclose readily available information such as funding improvement or rehabilitation plans that have been adopted and future contribution rates that have been negotiated in executed collective bargaining agreements, speculating about how any given employer may be affected by plans under consideration but not adopted is just that – speculation. This approach is hardly a reliable basis for financial reporting and highly inappropriate to be included among the required disclosures whose intended audience is current or potential investors or lenders.

With respect to the *Multiemployer Plans* exposure draft, we believe that as proposed the requirements will provide misleading and incorrect information, and will place an unreasonable burden on plans and companies. At the same time, we do understand the need for increased financial statement transparency in this area. However, as noted above, this transparency can be achieved through the disclosure of: (a) funded status data from statements provide by the plan pursuant to the Pension Protection Act; (b) <u>adopted</u> funding improvement and rehabilitation plans, (c) known contribution increases under executed collective bargaining agreements; and (d) withdrawal liability figures <u>only</u> when a company has taken actions to withdraw from a plan, or when such withdrawal is reasonably probable in the near future.

Conversely, asking employers to describe the circumstances under which they may be liable for the obligations of other contributing employers is unnecessary (since by definition, the unfunded vested liabilities of all multiemployer funds are shared by contributing employers), or could be addressed by a simple narrative description that references the withdrawal liability method adopted by the plan (e.g. presumptive, direct attribution, etc.). Similarly, asking employers in industries with exceptionally mobile workforces (such as construction, entertainment, longshore, or health care), to report the percentage of the active and retired participants of the plan employed by the company is a virtual impossibility. Would the employer report all employees and retirees who ever worked for the employer? Would they report employees who worked in the reporting period or on a specific date? Is there a minimum period for which they worked (more than casual employment) before having to be reported? Similarly, would they report retirees who ever worked for, earned pension credits as a direct result of their employment, or who were last employed by the employer? Where employment can be as short as a few hours, a day or two, or sporadic, what purpose is to be accomplished in providing such information?

Conclusions

Funding obligations of employers that sponsor defined benefit pension plans are a concern expressed by analysts and investors, not just in the U.S., but throughout the Western world. While the issue can be challenging for sponsors of single employer plans, the information needed to form appropriate conclusions about the relative funded strength of any given plan is more readily available and directly quantifiable. Multiemployer plans, however, present special challenges as the accounting profession attempts to develop new rules to enable them to present financial disclosures that are comparable for employers that sponsor single employer plans. This is particularly true in the U.S. Unfortunately, because of the unique nature of these plans, the industry-wide nature of their shared responsibilities, even the statutory and regulatory differences in funding and concepts like withdrawal liability, when this has been attempted whether in the U.S. or elsewhere in the world the results are similar to the proverbial pounding of the square peg in the round hole – they do not fit neatly.

While conceptually, asking for the reams of information proposed in the *Multiemployer Plans* draft may seem like a good idea, the associated costs, practical administrative implementation considerations far outweigh the marginal benefit to potential end users they will produce. It is our hope that FASB will be receptive to suggestions from the multiemployer community to modify their initial proposals and consider alternatives that will enable them to obtain greater transparency in a more measured way that does not produce exaggerated or misleading information that can have a deleterious effect on either the employers that sponsor multiemployer plans or, ultimately, the employees/participants of those plans.

Recommendations

We encourage all stakeholders (employers, employer associations, plans, professional advisors and labor unions) whose benefits are provided through multiemployer defined benefit pension

plans, to weigh-in directly with the Financial Accounting Standards Board on either, or both of these exposure drafts. Share this briefing paper with others in the multiemployer community. Explain how these or other issues contained in these Exposure Drafts may be problematic for your businesses, members, participants, clients and employers. Feel free to comment on the issues identified above and on any other issue whose impact may have been underestimated or misunderstood. While the notion of flooding the offices of politicians with mass generated letters to help them count votes on either side of an issue can be effective under the right circumstances, we would discourage that approach in this instance. Our best chance to positively influence FASB is for us all to encourage as many different individuals and organizations as possible to submit thoughtful, original letters, which describe how these proposed disclosure rules will affect them, their companies, employees, clients and members, and offer constructive suggestions on how their proposals can and should be corrected and improved to meet the Board's stated objectives without adding undue administrative costs or producing misleading and potentially harmful unintended consequences.

Please feel free to contact us to discuss the various issues presented by the exposure drafts, and to answer any questions you may have.

We thank you very much for your attention to, and assistance with, this very important issue and recommend that you visit our web site for periodic updates on this and other issues that affect multiemployer plans.

Sincerely,

Randy G. DeFrehn

Randy G. DeFrehn
Executive Director

Josh Shapiro

Josh Shapiro
Deputy Executive Director for
Research and Education