

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Technical Director
File Reference No. 1860-100
FASB
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No 1860-100

Dear Sir or Madam:

Thank you for the opportunity to provide supplemental comments regarding the Multiemployer Plans Exposure Draft issued on September 1, 2010. We filed our initial comments on this exposure draft on September 20, 2010. Subsequent to this filing, we have continued to discuss the Exposure Draft with companies that participate in multiemployer plans, with lenders, investors and other financial institutions that have an interest in these plans, and with the plans themselves. This document contains the additional considerations and perspectives that have resulted from these ongoing discussions.

Effective Date

The Exposure Draft states that the new disclosure requirements would apply to periods ending after December 15, 2010 for public entities, and periods ending after December 15, 2011 for nonpublic entities. This provision means that publicly traded companies that report their finances on a calendar year basis would need to include all of the required information in their 2010 financial statements.

As we discussed in our initial comments, the various disclosures required by the Exposure Draft will place a significant burden on both the companies and on the multiemployer pension plans. While this burden will exist every year that the disclosures are required, it will be particularly challenging in the year of adoption. For example, the Exposure Draft calls for a summary of the benefit provisions of the multiemployer plans. In most cases, the company will not be familiar with these provisions, which will make developing a summary a time consuming process. This issue is further complicated by the fact that many large multiemployer pension plans operate under numerous individual bargaining agreements, instead of a single national agreement. In these cases a single plan may have a great many different benefit accrual levels, benefit options, and contribution rates for different regions, and an individual employer may have employees operating under different sets of plan provisions. In addition, most companies are not accustomed to requesting information on contribution levels, participant statistics, and

withdrawal liability assessments from the plans. It will take time for the companies to develop policies and procedures that will ensure the efficient collection of this information.

Certain required disclosure items will be subject to various interpretations and data limitations that will require discussion and clarification before the information can be finalized. Paragraphs 715-80-50-1B (h) and (i) call for statistics regarding the company's employees that participate in the plan. Many companies that participate in multiemployer plans have highly mobile workforces. The composition of their workforces can vary significantly from week-to-week, and even from day-to-day. In some cases, a company may have zero employees on a particular day. In order to comply with the proposed disclosure requirement, companies will need to decide if the definition of an employee includes people employed at the end of the reporting period, people who were employed at any time during the reporting period, or people who worked a minimum number of hours during the reporting period.

Furthermore, the submission of required contributions for an individual employee is not a guarantee that the employee ever gained eligibility for any benefits from the trust fund. Not all funds have historically collected, or even now collect, data in a form that would make it possible to identify such a relationship. Additionally, most funds have formal reciprocity arrangements that permit contributions to be forwarded to the fund in which an individual worker has his primary residence, or that provide for pro-rata credit for contributions. The proposed standard that requires employers to list which of their active or former employees participate in the fund raises questions about how that standard would apply to reciprocity situations. While the primary focus of these comments applies to pension fund requirements and related disclosures, these data limitations also apply to health funds.

Just as the requirement will place a burden on employers, there will also be a burden on the multiemployer plans. The volume of information that participating employers request from the plans will increase dramatically. While the withdrawal liability information will pose the single greatest challenge for the plans, disseminating information on contribution levels, participant statistics, and plan provisions will also require time and effort on the part of the plans. Many plans will need to hire additional staff to meet the increased demand.

An additional concern is the fact that many companies, as well as their lenders and creditors, do not have the necessary understanding of multiemployer plans to either develop or interpret the proposed disclosure items. For example, in many cases where the company intends to remain in the multiemployer plan indefinitely, the concept of withdrawal liability has simply never been relevant. It will take a considerable amount of time for both the companies and their partners to develop the knowledge and understanding necessary to effectively comply with the proposed requirements.

For all of these reasons, we strongly urge FASB to consider delaying the proposed effective dates of the Exposure Draft. Considering the magnitude of the changes contained in the proposal, we recommend that FASB delay the effective dates by two years. This will provide both the companies and the plans with ample time to prepare for the expanded disclosure requirements. If the transition process is rushed, there will necessarily be misunderstanding, inefficiency, and a general lack of clarity of the disclosures while all parties adjust to the new information.

Potential Disclosure of Annual Withdrawal Liability Payments

Our initial comments contained the suggestion that FASB consider requiring the disclosure of the annual payment that would be required in the event of a withdrawal liability assessment. We offered this suggestion as a possible, and unfortunately only slightly less burdensome, alternative to the proposed disclosure of the single-sum withdrawal liability assessment amount. We recommend that FASB consider this option only in the event that the board insists on pursuing this course of action. As previously stated, however, we wish to restate unequivocally that we regard the disclosure of any withdrawal liability information to be both highly misleading and unnecessarily burdensome, except for cases where withdrawal is probable. The most appropriate action that FASB can take in this area is to remove all withdrawal liability references from the Multiemployer Plans Exposure Draft, and to focus on alternatives that are both more readily available and more appropriately representative of the firm's possible financial obligations.

A company's financial relationship with a multiemployer plan is best understood through the annual contributions that it makes to the trust fund pursuant to one or more collective bargaining and/or participation agreements. Each year the plan trustees are required to evaluate the funded position of the plan and report that information to all stakeholders, including contributing employers. In times of significant underfunding, the trustees of the plan will adopt either a funding improvement or rehabilitation plan to address the underfunding. Requiring that companies disclose the current annual contributions, the basis for determining these contributions, and the details of any improvement or rehabilitation plans that have been adopted by the trustees, will provide the users of the financial statements with the most complete understanding of the pension plan's impact on the company that is reasonably achievable. Expanding this disclosure into withdrawal liability when the company is highly unlikely to withdraw will unnecessarily confuse and mislead the users of the financial statements, and will create an unreasonable burden on the companies.

We sincerely hope that, as a result of this comment process FASB will understand why such disclosures are both unnecessarily burdensome to contributing employers and the plans and misleading to the end users of the financial statements for whom this additional transparency project was initiated. Furthermore, we believe that the overwhelmingly and consistently negative response to the original proposal by those closest to the process demonstrates how inappropriate and destructive it would be to require the annual disclosure of any specific withdrawal liability information, absent a demonstrated intent to withdraw. We encourage the Board to replace these requirements with alternatives such as those referenced above to accomplish the intended objective of transparency for the users of financial statements.

Social Policy Considerations

As discussed in our original comments, it is inappropriate to require the disclosure of potential withdrawal liability assessment figures in situations where there is not a reasonable possibility of a withdrawal. However, if all companies are forced to disclose potential withdrawal liability annually, it will certainly contribute to many employers' decisions to actually withdraw from the

plans. Further, if these events occur, it will not be the first time that accounting standards have caused employers to adjust or terminate their benefit plans.

Since the mid 1980's there has been a steady decline in the number of companies that offer defined benefit pension plans to their employees. While it would be incorrect to attribute this trend entirely to the adoption of FAS 87, any corporate executive will tell you that the volatility of the pension expense was an important consideration in the decision to freeze or terminate a pension plan. As companies found it to be impossible to adequately budget and manage their finances in the face of this new expense volatility, they closed down their defined benefit pension plans. A similar event occurred in the United Kingdom when an accounting change greatly increased the volatility of the pension expense for defined benefit plans.

The most striking example of an accounting standard that caused a change in companies' benefit plans is the rapid elimination of retiree medical plans following the adoption of FAS 106. The companies that offered these plans certainly understood that the long-term costs of the programs were very large, and this fact meant that they might not be able to offer them indefinitely. However, when FAS 106 required that companies recognize these long-term costs on their balance sheets immediately, the companies had no choice but to either radically alter the benefit structure, or eliminate the plans entirely. Tens of thousands of retirees experienced the termination of their retiree health care benefits directly as a result of an accounting standard. While the theoretical arguments for and against the principles behind FAS 106 are complex, the impact it had on people's lives was simple.

The burdensome and misleading disclosure information contained in the Multiemployer Plans Exposure Draft will have a real impact on real people. It will harm the employers that have responsibly and voluntarily decided to provide adequate retirement benefits to their employees. It will harm the millions of Americans who depend on multiemployer plans for their financial security. As FASB considers the final standard, we encourage the Board to consider the unintended consequences of actions currently being contemplated.

Why Withdrawal Liability is an Inappropriate Proxy

We understand that one of the purposes behind the disclosure of the potential withdrawal liability assessment in the Exposure Draft is to serve as a proxy for the company's share of the unfunded liability in the pension plan and, therefore, represent the employer's ultimate portion of any underfunding that would be paid over time. In this sense, this disclosure would be comparable to the recognition of an underfunded pension plan that currently applies to single-employer plans. In addition to the flaws in the withdrawal liability disclosures that we have discussed elsewhere, the comparison to single-employer plans results in an additional flaw in the use of withdrawal liability. The following two examples highlight why such a comparison is inappropriate:

Maintenance Contractors

Many construction industry contractors are primarily engaged in performing maintenance on large facilities, such as power plants, large manufacturing plants, and refineries. These projects are large and recurring and because they are limited in scope, they enable the employers to come into a jurisdiction, perform the work and then depart from the area, knowing that if their work in

that area is project driven and performed under the terms of the relevant agreements, they neither incur withdrawal liability, nor have any ongoing obligation to fund any portion of the underfunding as they no longer are performing work that would require them to continue to contribute. Therefore, the use of the proxy analogy (that the withdrawal liability represents that employer's ultimate share of the underfunding) is not applicable.

Overfunded Plans

While pension plans may be underfunded or overfunded, withdrawal liability generally only exists when the plan has unfunded liability. When a plan is in an overfunded position, rather than representing a share of the excess, the potential withdrawal liability is simply zero. Thus, this disclosure item will contain a liability figure when the plan has underfunding, but it will not contain an asset figure when the plan is overfunded. This is in contrast to single-employer plan, where the employers are able to recognize assets attributable to overfunded plans, despite the fact that the statutory restrictions on asset reversions apply to both single-employer and multiemployer plans. It is unfair and unreasonable to put companies in the position of needing to explain a 'liability' to their lenders and business partners when the pension plan is underfunded, without also giving them the benefit of an 'asset' when the plan is overfunded.

Construction and Entertainment Industry Exemptions

There are many events that can result in a withdrawal from a multiemployer pension plan. Some of these events are part of changes in a company's operations. In addition to the example of the maintenance contractors cited above, a company may no longer do business in an area that a particular multiemployer plan covers, or the owner of a small company may decide to retire and close the business. Some other events that can lead to a withdrawal are the sale of the company to a new owner, or the bankruptcy of the company. Additionally, a company may decide to remain in business but decide to cease contributing to the plan. The mere fact that a firm withdraws from a plan, however, does not necessarily trigger an assessment of withdrawal liability.

In the construction and entertainment industries, special rules apply to the assessment of withdrawal liability. In these industries, a company only receives a withdrawal liability assessment if it ceases participation in the plan, but continues to perform the same type of work, in the same geographic area, within five years of ceasing participation. If the company chooses to withdraw from the plan for any other reason, it is not responsible for any withdrawal liability payments. This special rule takes into account the fact that the construction and entertainment industries have extremely high degrees of employer mobility. Many projects in these industries are temporary by their very nature, which means that companies are constantly entering and leaving different areas and types of work. Rather than assessing withdrawal liability every time this happens, the law allows employers to enter and leave the markets without incurring withdrawal liability.

As a result of these special rules, withdrawal liability assessments in the construction and entertainment industries are rare. Companies withdraw from these plans all the time, but they are required to pay withdrawal liability assessments in only a small fraction of these cases. The users of the financial statements rarely have expertise in multiemployer plan funding, and when

they see a withdrawal liability disclosure they will naturally assume it is payable when the company withdraws from the plan. The construction industry alone represents over 50% of the total multiemployer plans in the country, and the proposed disclosure requirements will result highly misleading information for the companies that participate in these plans.

We understand that FASB does not intend to issue industry specific disclosure requirements, and we appreciate the challenges that specific disclosure would present to the audit community. However, given the fact that the proposed requirements will result in highly misleading information for the companies that participate in the majority of multiemployer pension plans, we strongly encourage FASB to remove withdrawal liability figures from the proposal.

Precedent for Limiting Disclosures Due to Cost Concerns

Our initial comments stressed the fact that requiring all companies to disclose their potential withdrawal liability assessments for all multiemployer pension plans in which they participate on an annual basis will result in an unreasonable burden on both the companies and on the plans. We believe that this disclosure is appropriate when it is probable that a company will incur a withdrawal liability assessment, but inappropriate and unnecessary when it is merely possible that the company could incur an assessment.

Just as the current exposure draft proposes expanding the disclosure requirements for multiemployer plan withdrawal liability, in 1992 FASB Statement 112 expanded the disclosure requirements for post-employment benefits such as severance programs and disability plans. However, FASB restricted the scope of this statement to only apply to liabilities where the likelihood of payment is probable. Where payment is less than probable, no disclosure is required under Statement 112. In the appendix, the statement offers the following explanation for this approach:

Statements 5 and 43 require disclosure if it is probable that an obligation has been incurred but it cannot be reasonably estimated. Statement 5 requires additional disclosures in other situations including when it is reasonably possible that a liability has been incurred. The Board decided not to apply the additional Statement 5 disclosures to postemployment benefit obligations because it believes that the additional cost of compliance is not warranted. Thus, this Statement requires disclosure only if an obligation for postemployment benefits is not accrued in accordance with Statements 5 or 43 solely because the amount cannot be reasonably estimated.

We urge FASB to apply the same approach previously developed in Statement 112 to the proposed multiemployer plan disclosures. Similar to determining the liabilities for postemployment benefits, withdrawal liability estimates involve complicated calculations as well as threshold determinations that require highly specific expertise. However, since even very small companies can participate in ten or more multiemployer plans, and many companies participate in fifty or more, the potential burden associated with this proposal is far greater than the potential burden under Statement 112. While the Pension Protection Act states that every employer has the right to request and receive a withdrawal liability estimate each year, this

provision of the law is practical only because few employers actually make use of it. The fact that the employer has the right to request the information does not make it “readily available”, as some have implied.

For many plans fulfilling these requests will require a significant allocation of fund resources (both time and money if actuarial calculations are involved); costs which will be passed on to the requesting party. If every employer requested this information for every plan in which they participate every year, the additional costs and disruption to fund administration would be exceptionally large. As discussed in our initial comments, the expense associated with preparing the withdrawal liability estimates far outweighs any potential benefits.

Disclosure of Plan Identifying Information

In our initial comments, we did not include the disclosure of information that would allow the readers of the financial statement to identify the specific plans in which the company participates in our list of suggested disclosure items. This was an oversight, and we believe this is relevant information that should be disclosed in the statements. Specifically, we suggest that the required disclosures include the full legal name of each multiemployer plan in which the company participates, and the Plan Number / Employer Identification Number (PN / EIN) for each plan. All plans file a Form 5500 with the Federal Regulatory Agencies that contains an exceptionally wide range of financial information on the plan. Including this identifying information in the disclosure will enable the readers who want to review in depth information on the plans to easily locate the Forms 5500, which are available free of charge.

Range of Industries and Companies

There is an underlying concept that is behind many of our comments that we have not previously stated explicitly. The companies that participate in multiemployer plans represent an incredibly diverse array of industries and sizes. The industries that provide benefits through multiemployer plans include automotive sales and service, aerospace, baking and confectionery, building and construction, building services, communications, entertainment, food production distribution and sales, healthcare, hospitality, longshore, maritime manufacturing, mining, office and professional, paper, printing, trucking and transportation. The companies that participate in these plans are predominantly small, most with fewer than 20 employees, but range in size from the very small (with less than ten employees) to Fortune 500 corporations that employ tens of thousands of workers.

Since we understand that it is impractical to tailor the accounting requirements to take into account the unique circumstances of each individual company, we have developed our comments with the philosophy that the disclosures must work for all industries and employers of all sizes and levels of sophistication. For example, disclosing participant statistics would be a simple exercise for some companies and an enormous challenge for others. Some large companies have accountants and actuaries on staff that would be able to effectively gather, process, and explain pension plan asset and liability information, while other companies completely lack these resources. Throughout our comments, we have sought to ensure that all companies that participate in multiemployer plans would be able to comply with the requirements without

misleading the readers of their financial statements, and without placing unreasonable burdens on the employers or plans.

Thank you for the opportunity to submit these supplemental comments. We would be happy to provide any additional information that you might request.

Best regards.

A handwritten signature in black ink, appearing to read "Randy G. DeFrehn". The signature is written in a cursive style with a large initial "R" and "D".

Randy DeFrehn
Executive Director