Campaign for Quality Construction

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
Norwalk, CT 06856-5116
director@fasb.org

RE: File Reference Number 1840-100

Dear Mr. Golden,

Please accept and consider these comments on the Financial Accounting Standards Board's Exposure Draft on Topic 450, Disclosure of Certain Loss Contingencies.

These comments are submitted on behalf of the Campaign for Quality Construction (CQC), a coalition of six leading national construction employer trade associations representing some 27,000 construction businesses nationwide.

Those associations are: the **Mechanical Contractors Association of America** (MCAA); the **Sheet Metal and Air Conditioning Contractors' National Association** (SMACNA); **The Association of Union Constructors** (TAUC); the **National Electrical Contractors Association** (NECA); the **International Council of Employers of Bricklayers and Allied Craftworkers** (ICE-BAC); and, the **Finishing Contractors Association** (FCA). The majority of the companies that are members of the six associations that make up the CQC are small privately held businesses, some are minority- and women-owned business enterprises, while others are large publicly owned companies.

All the member companies of our trade associations sponsor, contribute to and jointly administer and jointly trustee the majority of the multiemployer defined benefit pension plans in the construction industry, which are the subject of the Exposure Draft proposed revision on page 30, Compensation – Retirement Benefits – Multiemployer Plans, Subsequent Measurement 715-80-35-1 and -2, and Disclosure, 715-80-50-1 and -2.

Summary

The Campaign for Quality Construction supports FASB's goal of maintaining high accounting standards and transparency, as well as its efforts to serve all constituents fairly. However, we believe that FASB should re-evaluate the July 20th Exposure Draft in its entirety. We agree with others who have commented that FASB should establish standards which avoid disclosure of prejudicial and confidential information and also take into account rational cost-benefit principles. We will direct our comments in this letter to the provisions specific to employers that contribute to multiemployer pension plans.

As written, the document has generated differing opinions among accounting and actuarial professionals on FASB's intent regarding the threshold for disclosure of withdrawal liability as a loss contingency. The Coalition believes that under no circumstances should FASB contemplate revising the current clear threshold from "probable or reasonably possible" to "remotely possible." The purpose of loss disclosure accounting is to ensure that users of financial statements have a clear picture of risks. A disclosure threshold of "remotely possible" is neither necessary nor reasonable, particularly in the construction industry where ERISA law has very explicit rules regarding the payment of withdrawal liability. We agree with the current FASB standard which requires disclosure of withdrawal liability in those cases where it has been incurred or is objectively known or intended to be incurred in the future.

Background

Unprecedented stock market volatility has occurred twice in the past ten years and affected even the most well funded plans. In response, Congress has passed a series of measures since 2004 that all have been aimed at restoring funding stability and requiring specific funding targets for those plans as a matter of national pension and retirement security policy. For all plans, a complicated valuation of plan assets and liabilities occurs every year, but that valuation presents only a snapshot of a single moment in time and does not take into account the long-term nature of multiemployer plans or of other factors affecting plan funding (such as fluctuating stock market returns, benefit accrual adjustments or contribution increases, which at the bargaining table can come from the bargained wage package or increased employee contributions).

Each CQC member company is responsible for their collectively bargained per hour contributions to those plans (which are recognized costs under Section 715-80-35-1), and for any unfunded vested benefits withdrawal liability (addressed in Section 715-80-35-2) they would incur under special withdrawal liability rules that pertain to the

construction industry under the Multiemployer Pension Plan Amendments of 1980. Most construction employers contribute to multiple plans and larger companies may contribute to dozens of plans. An employer's share of withdrawal liability in any plan is based on its allocated share of the plan's unfunded vested benefits (UVBs), but federal law sets out a variety of allocation formulas that a plan can use for determining an employer's withdrawal liability.

Under the 1980 law, construction industry employers become liable for UVB withdrawal liability only if the company ceases contributing to the plan and continues to work in the geographic area of the collective bargaining agreement without contributing to the plan (or resumes covered work in the area for that plan within five years of stopping contributions). In essence, in construction the withdrawal liability is triggered by the company's own objective business decision to perform work in an area (or return there within 5 years) without contributing to the plan in which they had previously participated – in effect stopping work under the bargaining agreement and stopping contributions to the pension plan and still doing that type of work in that area- - thus becoming a non-union contractor. In exceedingly rare circumstances, a mass withdrawal by other contributing employers could trigger liability; however, this is an exceedingly rare circumstance that should not drive the design of the FASB standard. Moreover, any mass withdrawal would be covered by the objective standard set out in these comments.

Comments

CQC employers urge FASB to revise its proposed standard to require disclosure of any liability only in a way that comports with the special legislative rules that Congress enacted for multiemployer defined benefit plans in the construction industry.

Moreover, CQC asserts that the Exposure Draft on its face is subject to contradictory interpretations on what the likelihood for an asserted withdrawal liability claim is to trigger the disclosure requirement – more or less "remotely possible," or "reasonably possible." As between the two, "reasonably possible" is the only plausibly workable verbal formulation; but, both fail to account for the construction industry's unique rules. In the construction industry, withdrawal liability in virtually all cases is triggered by an objectively verifiable and known fact – the audit subject's business decision to continue operations without continuing to contribute to the plan or having a present intention to do so in the future.

Any verbal standard of undefined relative terms that is less objective and instructive than that would call for speculation about remote possibilities, fail to deliver truly

reliable and predictive disclosure for the benefit of users of financial statements, and present the great risk of very serious unintended consequences for the industry contrary to national pension policy.

In analyzing the Exposure Draft, the possible contradictory disclosure standards are based on this drafting question: Does the deletion of "probable or reasonably possible" qualification in Sections 715-80-35-2 and 715-80-50-2 give rise to a broader "remotely possible" disclosure standard?; or, is the "probable or reasonably possible" standard re-enacted over those sections referenced above by the inclusion of the qualification by operation of 450-20-50-1C? While the latter may be a fair construction of the document as drafted; questions have been raised by some potentially contradictory statements in the preamble to the document and the Board's Basis for Conclusions, points BC 11 and following. Put another way, what standard did the drafters intend to enact in the Exposure Draft, and is that standard accurately stated in the particular sections of the text?

CQC's specific response to the 8 questions posed for comment on the draft depend in part on which standard is intended in the text. Overall, however, CQC's position is that any standard that veers from the specific legislative rules set out for the construction industry would fail to meet the overall objective of the standard to provide clear and predictive disclosure to users of financial statements, and could well mislead rather than accurately inform users of the statements.

In our answers to these questions our response is limited to the proposed amendments to subtopic 715-80.

Question 1 – Are the proposed disclosures operational? If not, please explain why.

In 715-80-50-2 the reference to "probable or reasonably possible" has been eliminated. If this means that the amount of withdrawal liability must be disclosed by every contributing employer to a multiemployer plan then that requirement is most definitely not operational. The withdrawal liability amount would have to be calculated by the benefit plan actuary and the cost would be prohibitive to the plan and/or contributing employers. The withdrawal liability amount would not be meaningful because the information would be at least 14 or 15 months old by the time the employer's financial statements were released, and the plan's assets and vested benefit liabilities could have changed materially as of the most recent plan year-end. This misleading effect is demonstrated conclusively in the attached Exhibit A (Actual Construction Industry Airconditioning Pension Plan) and Exhibit B (Representative Multiemployer Pension Plan.) Furthermore, in any event, that liability would be adduced and reported without

regard to the audit subject's known objective intention to act in a way that would give rise to an asserted claim, and so would be doubly misleading.

If the change does not require disclosure of a calculated withdrawal liability amount, but only requires disclosure that a potential withdrawal liability could occur if the employer withdraws from the plan, then the disclosure may be operational if the standard was clear and unambiguous.

Question 2 – Are the proposed disclosures auditable? If not, please explain why.

If a withdrawal liability amount was required to be disclosed for all employers participating in multiemployer plans, the calculated amount furnished by the actuary of the multiemployer plan would be very difficult, if not impossible, to audit. The auditor would not be able to duplicate the calculations of the actuary and thus would have to rely on the work of this third party specialist. Since the third party specialist performs the work for the multiemployer plan and not for the employer, it would be difficult, if not impossible, for the auditor of the employer to perform the audit requirements needed to rely on the work of the specialist. Often an auditor can rely on analytical procedures to verify a number. The withdrawal liability amount could change radically from year to year, making such an analytical comparison impossible.

Question 3 – The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would:

a. Not require any new disclosures based on management's predictions about a contingency's resolution
b. Generally focus on information that is publicly available
c. Relate to amounts already accrued in the financial statements
d. Permit information to be presented on an aggregated basis with other similar loss contingencies?

If not, please explain why.

This question appears to apply to the proposed amendments as a whole and not to our concern about the subtopic relating to multiemployer plan disclosures.

Question 4 – Is the proposed effective date operational? If not, please explain why.

If the standard for disclosure is broadened beyond the objective occurrence of liability set out in the construction industry rules, then the time for implementation is not operational for either public or privately owned companies. The changes would be radical, the adjustments that plans and their actuaries and administrators would have to make would be substantial, and the cost to either plan assets or audit subjects would be substantial. Plans and contributing employers would need substantial time to prepare. Any time discrepancy in implementation as between private and public companies in construction would be unwarranted by the industry's special rules and could well raise competitive disparity between private and public companies that is not warranted by withdrawal liability rules that apply equally to both.

Question 5 – Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude and potential timing (if known) of loss contingencies?

No, the effect of disclosure of potential withdrawal liability for employers when withdrawal is an unlikely event would have the opposite of the intended effect. As demonstrated in the Exhibits, it will create misleading financial information and certainly would not enhance the financial statement for users. We do not believe that the reader of the employer's financial statements will have any interest in the amount of a potential withdrawal liability calculation that is unlikely to ever be assessed. If the employer were to cease being a contributing employer to the plan in a way that would trigger a withdrawal liability assessment, then the amount would have relevance and should certainly be booked. That has been true since FASB No.5 was issued and remains unchanged today. We find it difficult to believe that anyone would have interest in a withdrawal liability amount that is unlikely to ever be assessed and is also out-dated and unreliable information at the time it is reported.

Question 6 – Do you agree that *nonpublic entities* should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.

We do not believe that the withdrawal liability amount that is not incurred should have to be disclosed by either public companies or by non-public entities.

Question 7 – The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

If the amendments were to be adopted, any delay in implementation would be imperative for the reasons set out in the answer to 4 above for both public and non-public entities.

Question 8 – Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.

Not addressed.

Conclusion

The CQC is not commenting specifically on other controversial aspects of the Exposure Draft, but would generally be in agreement with the views expressed by the U.S. Chamber of Commerce and other public construction companies filed with FASB, urging FASB to reconsider the initiative altogether, to strike at particular problematic areas in a more cost-effective way. CQC urges FASB to reconsider the evaluation of loss contingencies in the construction industry in a more realistic way that allows considerations of potential losses net of potential recoveries so as to avoid detailed and misleading data.

In the absence of overall reconsideration of the Exposure Draft, CQC would urge FASB to adopt a construction industry specific rule on multiemployer defined benefit plan withdrawal liability that fully comports with the special rules enacted by Congress in 1980. To do less would be to raise a conflict with that Congressional policy, and further raise the specter of very serious other unintended consequences for the industry, not the least of which would be to have flawed, out-of-date and misleading information nevertheless threatening the unwarranted contraction of commercial and surety bonding credit to the great jeopardy of sponsoring employers, the plans themselves, and the industry's capacity to continue to provide benefits to employees and plan participants, loss of jobs, and services to the economy.

CQC also would restate its previous requests for a field hearing with senior FASB officials to discuss this matter of great importance to the industry. For that effort, CQC would marshal a broad panel of industry legal, accounting, actuary, and plan trustee expertise,

and other resources and views to provide detailed constructive input to help all concerned reach a conclusion that advances the disclosure policy without raising the prospect of inadvertently adducing misleading information that also raises the prospect of wrenching unintended consequences for an important sector of our national economy and our industry.

Respectfully submitted,

John R. Gentille
Executive Vice President & CEO
Mechanical Contractors Association of America
www.mcaa.org

Vincent R. Sandusky
Chief Executive Officer
Sheet Metal and Air Conditioning Contractors' National Association
www.smacna.org

John M. Grau
Chief Executive Officer
National Electrical Contractors Association
www.necanet.org

Stephen Lindauer
Chief Executive Officer
The Association of Union Constructors
www.tauc.org

Matthew S. Aquiline
Executive Director
International Council of Employers of Bricklayers and Allied Craftworkers
www.icebac.org

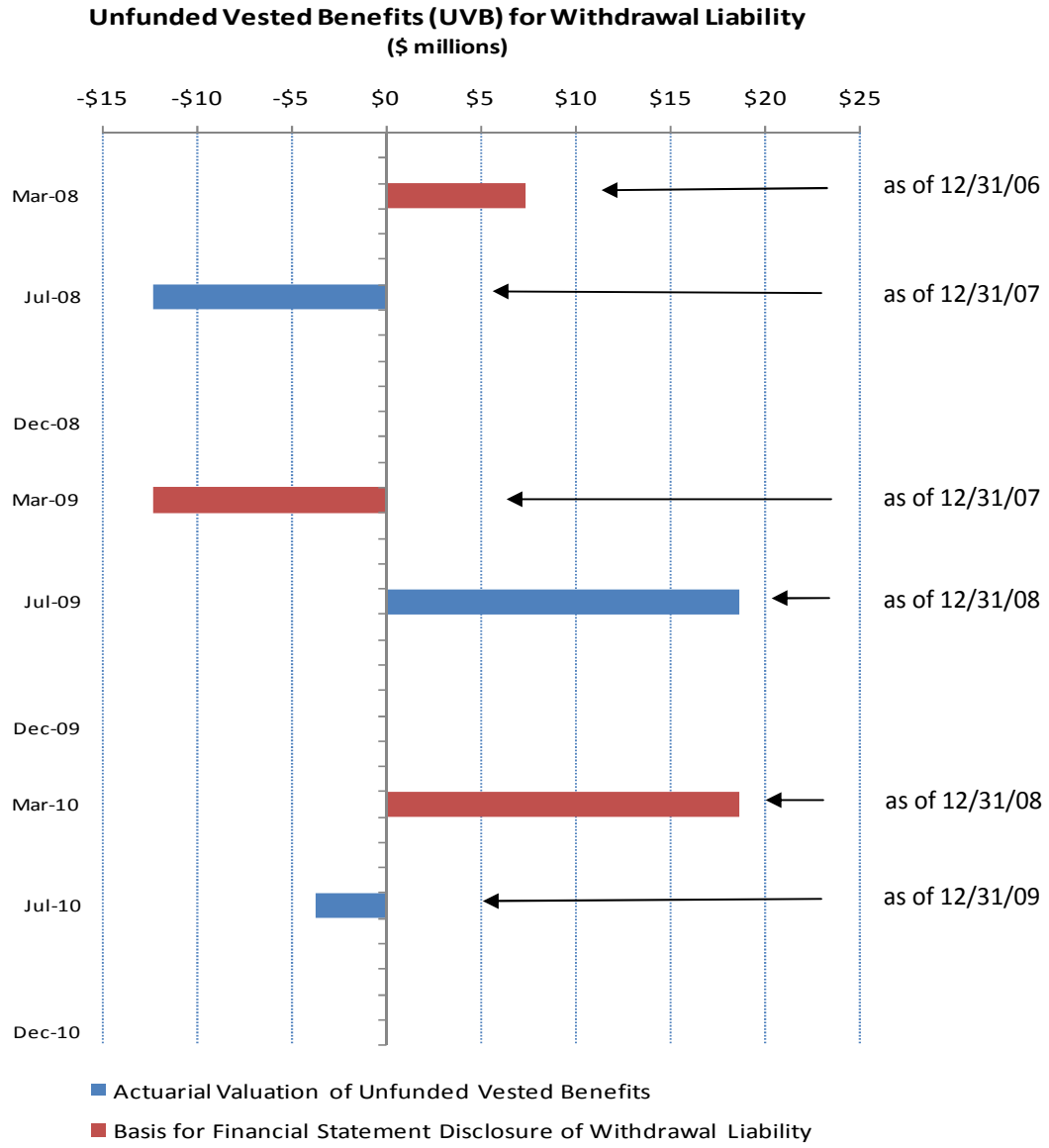
Anthony Darkangelo
Chief Executive Officer
Finishing Contractors Association
www.finishingcontractors.org

These comments reflect the input of principal members of each association, from the viewpoint of multiemployer group plan sponsors and individual contributing employers. The comments also were drafted with the input from a panel of expert accounting and actuarial consultants, who are: Larry Beebe, CPA of the Bond Beebe CPA firm in Bethesda, Maryland; Stan Goldfarb, FSA, an Actuary and Managing Consultant with Horizon Actuarial Services in Silver Spring, Maryland; and Cary Franklin, an Actuary and Managing Consultant with Horizon Actuarial Services in North Hollywood, California.

The CQC is comprised of the Finishing Contractors Association (FCA), the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), and The Association of Union Constructors (TAUC). According to Bureau of Labor Statistics figures, CQC associations and their members represent the vast majority of industry employment at 64% of employment overall in the industry. Our organizations represent the high-skill, leading edge sector of the industry, providing the top-tier training, wages, health and welfare and pension benefits necessary for a strong workforce skill base.

Exhibit A

Actual Construction Industry (Airconditioning) Pension Plan



	Actual Fund UVB	UVB for Disclosure	FASB Error Factor
December 31, 2007	$12.3 million		
December 31, 2008	-$18.7 million	$12.3 million	$31.0 million
December 31, 2009	$3.7 million	-$18.7 million	$22.4 million

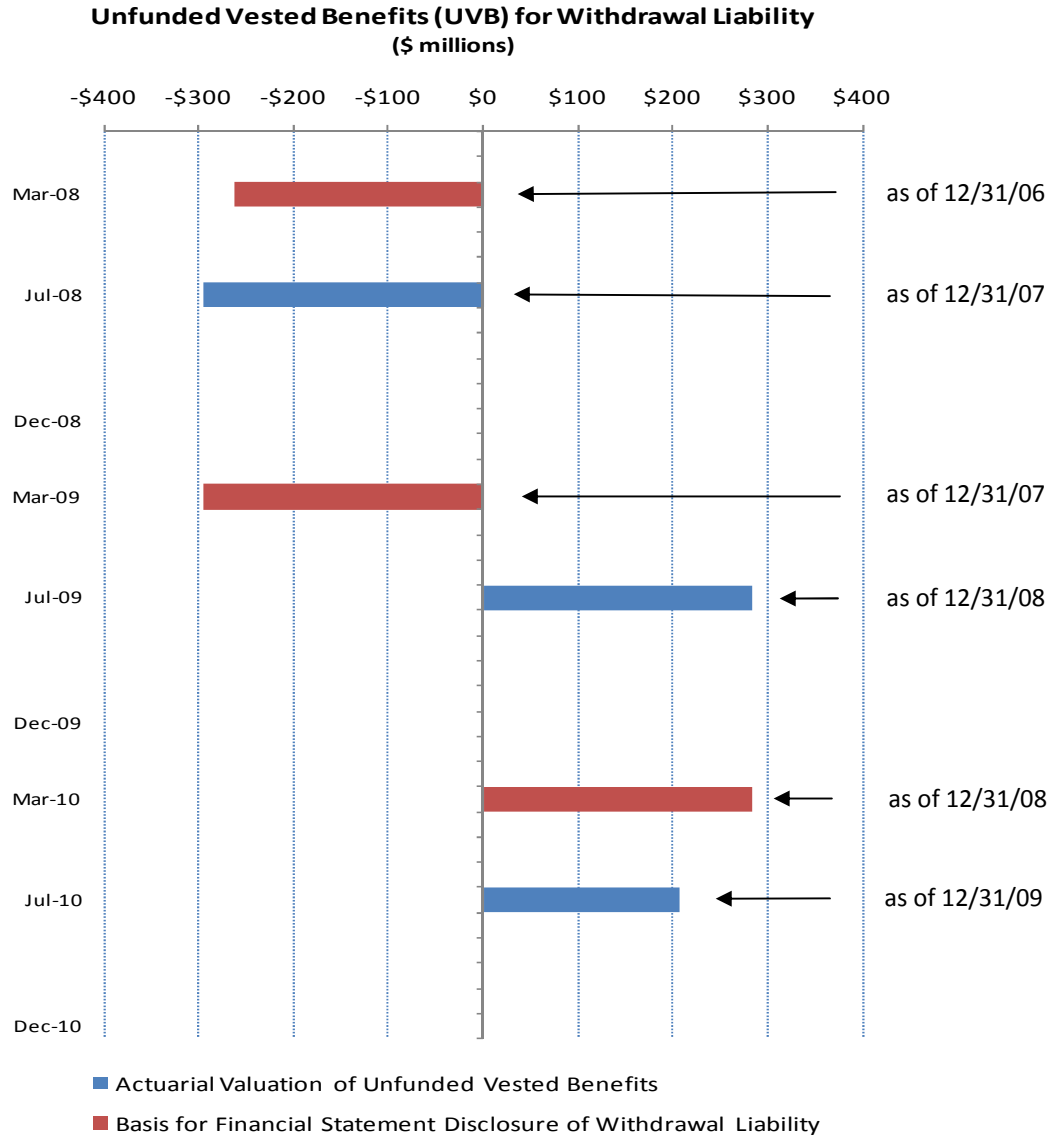
This chart presents actual results for a multiemployer pension plan with $235 million in assets as of December 31, 2009. This plan's actuarial valuation is completed in July each year. Assume that an employer's financial statement is prepared in March of each year, before the valuation is completed. Since the plan's withdrawal liability valuation for the most recent plan year is not available when the financial statements are prepared in March, the previous year's valuation would be used as the basis for disclosing the employers' estimated withdrawal liability. As shown in the chart, this information is 15 months old when the financial statements are released.

For example, an employer participating in this plan would have disclosed no withdrawal liability in its December 31, 2008 financial statements released in March 2009 (based on the plan's $12.3 million funding surplus at December 31, 2007), just three months after the close of the plan's worst ever investment year. In March 2010, the December 31, 2009 financial statements would have reported a very large withdrawal liability figure (based on the plan's December 31, 2008 deficit of $18.7 million), when in fact there was no potential withdrawal liability at that time, due to the plan's recovery to a $3.7 million surplus.

Prepared by: Horizon Actuarial Services, LLC

Exhibit B

Representative Multiemployer Pension Plan



	Representative Fund UVB	UVB for Disclosure	FASB Error Factor
December 31, 2007	-$296 million		
December 31, 2008	$284 million	-$296 million	$580 million
December 31, 2009	$207 million	$284 million	$77 million

This chart presents results for a hypothetical multiemployer pension plan with $1,334 million in assets as of December 31, 2009. This plan's investment returns of -25% in 2008, followed by 18% in 2009, are representative of many multiemployer plans. This plan is also representative of many plans in that it had a funding surplus at the end of 2007, a significant deficit at the end of 2008, and a partial investment recovery by the end of 2009.

The comments regarding the timing of financial statements relative to the completion of the plan's actuarial valuation, as described in the previous illustration, are applicable here as well. In this case, the participating employer's December 31, 2009 financial statements, released in March 2010, would have materially overstated the amount of any potential withdrawal liability, as it would have been based on the plan's December 31, 2008 valuation.