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

Re: File Reference Number 1840-100 – Contingencies (Topic 450)  

Dear Mr. Golden:

We appreciate the opportunity to comment on the FASB 450 Exposure Draft issued on July 20, 2010 with respect to loss contingencies. We represent a group of employee benefit consultants, employers and employer associations from the construction, grocery, and trucking industries. Together, the group membership represents approximately 40,000 employers, including the Associated General Contractors of America, the Food Marketing Institute, the Ironworkers Employers Association of Washington, D.C. and Baltimore, the Mechanical Contractors Association of America, the National Association of Construction Boilermaker Employers, the National Electrical Contractors Association, and the Association of Union Constructors. As the interests of these industries are potentially, directly, and adversely affected by the proposal concerning contributors to multiemployer plans as presented, our comments focus on those proposed amendments.

The intricacies of the multiemployer funding rules are very fact sensitive, exceedingly complicated, and ever evolving. The proposed amendments intersect with those rules in ways that are not immediately obvious. The plan design of multiemployer plans and their unique funding rules present unique challenges.

Without careful consideration of the interaction between the complex rules and the proposed amendments, we are concerned that the proposed reporting could result in severe, adverse business and social consequences while at the same time not furthering FASB’s mission to provide decision-useful, accurate financial information to investors and other users of financial reports. To the extent such collateral consequences are the likely result of inaccurate or misleading statements presented under the proposed amendments, it is all the more important that the Board carefully consider the standard it sets. As the FASB’s rules emphasize, financial reporting information is the product of a financial reporting system that also includes the entities that prepare financial statements, auditors, regulators, and other stakeholders. We strongly urge the FASB to give careful consideration to those other stakeholders’ views about the benefits and costs of accounting standards for multiemployer plans as it develops them, and it is for this reason that we are providing these comments.
The Multiemployer Amendments Are Unclear, Not Cost-Justified, and Should Be Withdrawn

We support the effort to provide accurate decision-useful information to users of financial statements; however, we are concerned that the proposed amendments will result in the reporting of expensive, inaccurate, misleading, and stale data.

To begin with, the administrative costs associated with a determination of individual employer withdrawal liability on an annual basis will be disproportionate to any benefit provided to the user of the financial statement. The necessary information is not currently available under routine plan administrative practices. The time and money required to do so would place significant financial and logistical burdens on multiemployer plans and contributing employers. One of the Guidelines of the FASB Rules of Procedure (May 1, 2010) is: "To issue standards only when the expected benefits exceed the perceived costs. While reliable quantitative cost-benefit calculations are seldom possible, the FASB strives to determine that a proposed standard will fill a significant need and that the perceived costs it imposes, compared with possible alternatives, are justified in relation to the overall expected benefits." Id at II.D.3. As proposed, the amendments to paragraphs 715-80-35-2 and 715-80-50-2 (the "Multiemployer Amendments") do not meet FASB's guidelines.

Moreover, the increased expense will not produce data which is timely since the relevant information will not be available. Given the number of exceptions and limitations to withdrawal liability and given issues regarding the timeliness of the data, the best information that can be provided to the financial statement user will likely be incomplete. Such information will not be helpful to the sophisticated investor and will be misleading to the unsophisticated investor.

Further, the Multiemployer Amendments do not present a clear standard by which to judge whether an employer's potential withdrawal liability to a multiemployer plan should be characterized as a loss contingency. Under the current language, that potential liability is judged against a "probable"/"reasonable possibility" standard of paragraph 450-20-50-1C(a) & (b) (which is moved from existing paragraph 450-20-50-6, p.14). Pursuant to the amended language, it is unclear whether the existing "probable" or assertion/"reasonable possibility" of an unfavorable outcome standard of paragraph 450-20-50-1C(a) & (b) for "unasserted claims" or the proposed "remotely possible" with a "severe impact" standard of paragraph 450-20-50-1D for "asserted claims" should be applied to potential withdrawal liability of an employer that currently contributes to a multiemployer plan. In particular, to the extent that the Board intends for the "remotely possible"/"severe impact" standard to be applied to such potential withdrawal liability claims because it believes: (1) such claims are somehow inherently "asserted" prior to an actual withdrawal; (2) a plan's awareness of such potential withdrawal liability in the future is somehow inherently a "manifested" claim, or (3) such claims are somehow generally "probable" whether asserted or not, the Multiemployer Amendments should simply be withdrawn as inaccurate because they would then likely greatly overstate potential liability.
Withdrawal Liability Is Generally Not "Asserted" Until an Employer Has Withdrawn

In the event that FASB does not withdraw the Multiemployer Amendments, we request that the Board clarify the criteria used to determine whether a claim for withdrawal liability has been "asserted" against an employer. Since employers' obligations for potential withdrawal liability cannot be "asserted" unless there are facts that lead a plan to conclude that a withdrawal by employers has occurred, there is no reason to apply the "remote"/"severe impact" standard to an employer's potential withdrawal liability until it has actually withdrawn or there is non-speculative extrinsic evidence that an actual withdrawal is imminent. With rare exceptions, and unlike an "unasserted" claim by a potential plaintiff in a tort or similar suit, the employer's negotiations with the union and the employer's unilateral choices (not the potential plaintiff) generally determine whether a multiemployer plan will assert a withdrawal liability claim. In order to clarify that withdrawal liability claims are generally "unasserted" claims that should be judged under the "probable"/"reasonably possible" standard, we request that the Board add the following as paragraph 450-20-50-1E:

When assessing whether a claim for withdrawal liability has been asserted, an awareness of such claim has been manifested, or such claim is probable of assertion by a multiemployer plan against an entity, the entity shall only consider whether it has actually withdrawn from the multiemployer plan or there is non-speculative, extrinsic evidence that an actual withdrawal is imminent.

As set forth above, the provisions of paragraph 450-20-50-1C(a) & (b) (existing paragraph 450-20-50-6) should be applied to potential withdrawal liability claims by a multiemployer plan against an employer.

Disclosure of Potential Withdrawal Liability Claims Should Only Be Considered Based on All the Factors That Affect It

If a withdrawal liability claim is actually "asserted" by a multiemployer plan against a withdrawing employer, the "remote"/"severe impact" standard in section 450-20-50-1D should not be applied if the standard does not take into account the funding rules under the Employee Retirement Income Security Act of 1974, as amended. Those rules could significantly reduce or eliminate any withdrawal liability due by the employer. Depending on facts that may not be known until the time of withdrawal, those exceptions or reductions may include but are not limited to: a twenty year cap on annual payments; an exception for certain corporate transactions; and exceptions for employers participating in certain industries (e.g., the construction industry). To the extent that the amount of an employer's potential funding liability to a multiemployer plan would be reduced or eliminated by an industry exception or otherwise, that amount would not have a "severe" or "material" impact on the operation of the employer. Thus, if the Board does not withdraw its proposed amendments to 715-80, we request that the Board add the following as paragraph 450-20-50-1G:
When assessing the severe impact or materiality of loss contingences to determine whether disclosure is required for an entity's funding obligations to a multiemployer plan, an entity shall consider the possibility that the obligation will be reduced or eliminated as a result of limitations on annual payments, discounts to present value, forms of corporate transactions, industry exceptions, or other factors.

While we understand that it may be within an auditor's discretion to consider the entities' ability to manage any potential withdrawal liability with respect to reporting, we believe it is important to add the clarifying language with regard to the new standard in order to promote a common interpretation among reporting entities, auditors, investors, and other users of financial statements. The failure to consider funding rules that may act to limit or eliminate funding liability of a contributing employer would harm the integrity of the audited financial statement by providing misleading and inaccurate information.

**Only Public, Non-Confidential Qualitative Information Should Be Disclosed**

Much of the qualitative information which may be required to be disclosed by the proposed amendments is likely confidential information protected from disclosure by counsel to an auditor under the ABA's Statement of Policy Regarding Lawyer's Responses to Auditor's Requests for Information. The disclosure of such information could compromise the legal defense of a claim. Only public, non-confidential information should be required to be reported under paragraph 450-20-50-1F.

**The Effective Date Should Be Delayed**

Given the operational challenges and burdensome cost that would be imposed on employers and multiemployer plans as a result of the proposed amendments, we request that the Board extend the effective date for public and private entities to fiscal years beginning after December 15, 2013. The time required to establish procedures to obtain the necessary information and the attendant confusion regarding even a properly revised standard make implementation by the proposed effective date impractical.

We appreciate the Board's and FASB's Staff's hard work in this area and offer our assistance in any way you think helpful. Again, thank you for the Board's consideration of our comments.

Sincerely,

James V. Cole II