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FASB Issues Exposure Draft Outlining New Employer Disclosures Related to Multiemployer Defined Benefit Pension Plans

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As we reported in our April 28, 2010 Client Alert, the Financial Accounting Standards Board (the "FASB") recently decided to issue a proposal that would amend U.S. Generally Accepted Accounting Principles ("GAAP") to require employers to disclose in footnotes to their financial statements new quantitative and qualitative information regarding their participation in multiemployer defined benefit plans. See Client Alert: FASB Proposal Regarding Multiemployer Plans. On September 1, 2010, the FASB issued an Exposure Draft (the "Proposal") outlining its proposed amendments to GAAP.[1]

Rationale for Amendments to GAAP

The FASB has indicated that the proposed amendments to GAAP are intended to address a perceived lack of transparency regarding employers' participation in multiemployer defined benefit pension plans. The FASB appears concerned that multiemployer plans, and the employers participating in these plans, are exposed to increased risks as a result of the recent economic downturn and the requirements of the Pension Protection Act of 2006 applicable to financially troubled plans.

New Required Disclosures

The Proposal explained that the proposed amendments to GAAP focus on three areas of disclosures, which are intended to increase transparency of an employer's risks and commitments arising from its participation in a multiemployer plan:

(1) information about the multiemployer plan,

(2) information about the employer's participation in the plan, and

(3) information about the cash flow implications arising from the employer's participation in the multiemployer plan.

Specifically, under the Proposal, an employer will be required to provide the following disclosures in footnotes to the employer's financial statements (although accounting adjustments to financial statements will not be required):

- The number of plans in which the employer participates.
- The names of individually material plans.
- Narrative descriptions of the following:
  - the employer's exposure to significant risks and uncertainties arising from its participation in the plan(s);
  - how benefit levels for plan participants are determined;
  - whether the employer is or is not represented on the board of trustees of the plan(s);
  - the consequences the employer may face if it ceases contributions to the plan(s); and
  - any funding improvement plan(s) or rehabilitation plan(s), including the expected effects on the employer.
- A description of the nature and effect of any changes affecting the comparability from period to period, including a business combination or divestiture and the rate of employer contributions for each period for which an income statement is presented.
- Total assets and the accumulated benefit obligation of the plan(s).
- Employer's contributions as a percentage of total contributions to the plan(s).
- A description of the contractual arrangement(s), including the term of the current arrangement(s), the agreed-upon basis for determining contribution(s), and any minimum contribution(s) required by the agreement(s).
- Percentage of the employer's employees covered by such plan(s).
- Quantitative information about the employer's participation in the plan(s) – for example, the number of its employee participants as a percentage of total plan participants disaggregated between active and retired participants.
- Amount of contributions for the current reporting period and expected contributions for the next annual period

- Known trends in contributions, including the extent to which a surplus or deficit in the plan may affect future contributions.
- Information pertaining to amounts required to be paid on withdrawal from the plan or windup of the plan.

The FASB's Exposure Draft includes sample narratives for the various items of disclosure set forth above.

Employers Participating in Multiple Plans

The FASB's proposed amendments to GAAP would require employers to provide separately for multiemployer plans providing pension and other post-retirement benefits certain quantitative and qualitative disclosures about their participation in such plans. The reason for the separate reporting requirement stems from the fact that multiemployer pension plans offer different types of benefits and pose different risks than other types of multiemployer post-retirement benefit plans.

For employers that participate in multiple pension plans, the new rules appear to allow the employer to aggregate information for more than one plan where the plans have similar risk characteristics or contractual commitments. However, the proposed amendments would require that an employer provide separate disclosures for plans or groups of plans with significantly different risk characteristics or contractual commitments and explain the basis for disaggregating the plans or groups of plans. Furthermore, quantitative disclosures would need to be provided separately for individually material plans.

Effective Dates

The proposed amendments are intended to be effective for public companies for fiscal years ending after December 15, 2010. There is a one-year delayed effective date for nonpublic entities.

Next Steps

Employers should review the new disclosures that they will be required to provide in footnotes to their financial statements and ascertain whether they have all required disclosures readily available. To the extent that information is required to be obtained from the plan(s) to which the employer contributes, employers should provide ample notice to the plan(s). Employers should be aware that certain information required for disclosure, such as individual employer withdrawal liability, is not regularly calculated by plans, and may not be readily available to employers on short notice. Multiemployer pension plans should similarly be aware of the new information that employers will be required to disclose in their financial statements and be prepared to provide the information to employers upon their request.

Employers and multiemployer plans also should consider submitting comments to the FASB regarding the Proposal. While increased disclosure is generally useful, the FASB should be encouraged to ensure that these new requirements do not have the unintended consequence of misleading the readers of financial statements or overly burdening employers or plans.

For example, some have expressed concern that, in its current form, the Proposal will not only severely burden multiemployer plans (in that those plans will likely be inundated with requests for information) but also result in significant expense (the allocation of which is not yet entirely clear, but may fall on both employers and plan participants). In addition, many have expressed concern that some of the required disclosures will not provide an accurate picture of the true risks to employers. By way of just one example, required disclosure of withdrawal liability estimates may mislead readers of financial statements because such disclosure is required even where the likelihood of it actually being incurred is quite small (either because the employer has no intention of withdrawing from the plan or because special industry rules apply that effectively would preclude an employer from incurring the liability except in rare circumstances). In addition, withdrawal liability estimates are often at least one year old and withdrawal liability can vary widely from year to year.

Thus, employers and plans may wish to encourage the FASB to revise its Proposal to tailor it more narrowly to achieve its intended purpose, taking into account the harm caused by misleading information and overly burdensome requirements.

If you have any questions regarding the Proposal issued by the FASB or this client alert, please feel free to contact any of the lawyers listed in this client alert.

[1] We note that on April 29, 2010, the International Accounting Standards Board also issued an Exposure Draft detailing proposed amendments to IAS 19 *Employee Benefits*, which contains similar, and potentially even more burdensome, requirements relating to the accounting standards for defined benefit pension plans.

Related Professionals

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