Steven Goldstein - Will the FASB's pending disclosure requirements for withdrawal liability affect the way you do business?

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Last summer, the Financial Accounting Standards Board (FASB) issued an exposure draft proposing new rules with regard to multi-employer pension plans. Specifically, the draft proposed new rules to require disclosure of unfunded pension liabilities on participating employer financial statements. The FASB's goal with this proposal, which could potentially be passed next month, is to increase transparency and accountability, providing banks, sureties, and plan members with the necessary information to have an accurate picture of the health of the plan. Unfortunately, this idea, however well intentioned, has become a point of contention with many contractors, and the stakes are higher than they may seem at first glance.

Under current law, employers are not required to reflect potential multi-employer plan withdrawal liability on their financial statements. They are only required to provide a disclosure indicating that if the company were to withdraw from a plan or terminate from the plan, the company could be liable for a proportionate share of unfunded actuarial present value of plan benefits at the date of withdrawal or termination and that the actual amount of such unfunded liability is not known. Only when the employer has actually withdrawn or is about to withdraw is the employer required to record the obligation. If the FASB has its way, employers will have to calculate and report the potential liability, whether or not any obligation to pay actually exists at the time.

The withdrawal liability rules dictate that an employer that leaves a multi-employer plan due to withdrawal or termination must continue payments to the plan to help complete funding the plans liability for vested benefits. Therefore, "withdrawal" refers to the employer permanently ceasing operations under the plan or ceasing to have an obligation to contribute.

However, there are special rules governing the construction industry: Withdrawal liability is incurred only if the employer is no longer obligated to contribute to the plan but still continues the same type of work in the same area as was covered by the union agreement and does not contribute on that other work. In other words, a contractor that decides to retire, close down or sell the business does not face withdrawal liability. A contractor who stays in business but ends the relationship with the multi-employer plan, however, does.

That is the central point of conflict. From the contractors' perspective, a disclosure of withdrawal liability for a healthy plan could have an adverse effect on their ability to secure loans and, subsequently, their ability to invest and hire. It could also increase the time and logistical burden of preparing and submitting financial statements as well as the cost of actuarial and accounting services.

Many contractors have become alarmed at these possibilities, and they have been vocal in raising these concerns. Paul O'Brien, managing director of the Building Contractors' Association of New

York, which represents over 300 construction organizations, commented that "This perceived requirement for accurate financial statements is totally unnecessary. Not only would it be an increased logistical and financial burden, but it could also negatively impact our ability to secure bonding and financing." Tom Gallin, CFO of John Gallin & Son, Inc., echoed this idea, adding that "It's just not reasonable to have this kind of information prepared in a useful timeframe, which makes these rules pointless. It may not even be physically possible for larger companies to track and provide this kind of information without buying and implementing sophisticated and expensive new systems. If anything, these rules could just incentivize new contractors not to work with unions, and it could even needlessly force some companies out of business."

In our letter to the FASB, our firm brought up concerns that this disclosure requirement would make many financial statements misleading and cause them to be over reliant on assumptions (future funding, discount rates, return on assets, etc.). We find the proposed standards to be unnecessary, onerous, needlessly expensive, time consuming, and unlikely to produce the intended results with any kind of useful accuracy. Furthermore, financial statements can't be produced on an on-demand basis, and calculating these liabilities can possibly take from six to nine months after a company's year-end, and calculating expected contributions for the next annual period would likely be difficult, if not impossible, to accurately determine. From our firm's perspective, these rules could be both costly and time-consuming for construction companies, as well as for their plan actuaries and accountants.

This is not an easily resolvable conflict, but it is one about which many companies feel very strongly. To make your opinion heard, you can still write to the FASB to voice your support for or opposition to the proposal. Moreover, consult with your business advisors to discuss how plan withdrawal liability might affect you, especially if you are planning to sell, merge, or acquire businesses. Regardless of what the final FASB rules look like, with careful planning, you'll be able to make informed decisions for the future.

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