

## Alert

### **FASB Enhances Disclosure Requirements for Employers Participating in Multiemployer Plans**

**November 10, 2011**

To increase transparency, the Financial Accounting Standards Board (“FASB”) has imposed new disclosure requirements on nongovernmental employers participating in multiemployer plans in its recently issued Accounting Standards Update No. 2011-09, Compensation — Retirement Benefits — Multiemployer Plans (Subtopic 715-80): Disclosures About an Employer’s Participation in a Multiemployer Plan (the “Update”). Public entities must comply with these new disclosure requirements for fiscal years ending after Dec. 15, 2011; nonpublic entities must comply for fiscal years ending after Dec. 15, 2012. Though not required, the FASB is permitting early application of the disclosure requirements if employers are willing and able to provide the required information before the applicable effective date.

#### **Why New Disclosures Are Needed**

Historically, employers participating in multiemployer plans have had to disclose only the most basic information — primarily the total amount the employer contributed to multiemployer plans that year. The FASB issued the Update on Sept. 21, 2011 in response to concerns about the lack of transparency regarding an employer’s participation in a multiemployer plan. As the FASB recognized, employers participating in multiemployer plans face certain risks and commitments because assets contributed by one employer may be used to provide benefits to employees of other contributing employers, and if one contributing employer fails to make its required contributions (or withdraws from the plan) other participating employers may have to bear the plan’s remaining unfunded obligations. These risks became even greater during the recent economic downturn, throughout which employers have faced continuous financial struggles and related consequences, including restrictions on benefits and increased contributions, and many multiemployer funds have been forced to contend with increased levels of underfunding.

#### **Who Is Affected?**

Only nongovernmental employers participating in multiemployer plans must comply with the new disclosure requirements. Though most of the disclosure requirements apply only to multiemployer pension plans, some requirements apply to multiemployer plans that offer postretirement benefits other than pensions.

Because the FASB is concerned with risks that pertain specifically to multiemployer plans, the new disclosure rules do not apply to employers participating in multiple-employer plans. This is because rather than commingling the assets of various employers, as occurs in multiemployer plans, each employer participating in a multiple-employer plan has its own account for its own obligations and share of the plan’s assets. Similarly, the new disclosure rules do not apply to subsidiary employers participating in their parent’s single-employer plans, or to local chapters of not-for-profit entities participating in their national organizations’ single-employer plans.

## Requirements for Plans That Provide Pension Benefits

An employer participating in a multiemployer plan that provides pension benefits must provide a narrative description of the general nature of the plan and the employer's participation in the plan to indicate how the risks of participating in a multiemployer plan differ from the risks of participating in a single-employer plan.

In addition, employers must disclose information for each individually "significant" multiemployer plan that provides pension benefits. In determining whether a plan is "significant," an employer must consider many factors, including the amount of the employer's contribution to the plan and the plan's funding status. For each individually significant plan, an employer must disclose the following information, in tabular format when feasible:

- The plan's legal name.
- The plan's Employer Identification Number and, if available, its plan number.
- The most recently available certified zone status, as required under the Pension Protection Act of 2006, including the date of the plan's year end to which the zone status relates and whether the plan has taken advantage of any extended amortization provisions that affect the determination of the plan's zone status. If the plan's zone status is unavailable, the employer must disclose, as of the most recent date available, whether the plan was: (a) less than 65 percent funded; (b) between 65 percent and 80 percent funded; or (c) at least 80 percent funded.
- The expiration date of any collective bargaining agreement requiring contributions to the plan. If more than one collective bargaining agreement applies, the employer must provide a range of the expiration dates of those agreements, along with a qualitative description identifying the significant collective bargaining agreements that fall within that range and any other information that investors may need to understand the significance of the collective bargaining agreements and when they expire. The Update does not specify whether the employer must report the expiration date of all collective bargaining agreements requiring contributions to the plan or just the expiration date of the employer's collective bargaining agreement that requires contributions to the plan.
- For each period that a statement of income (or statement of activities for nonpublic entities) is presented, employers must also provide:
  - The employer's contributions to the plan;
  - Whether the employer's contributions represent more than five percent of total contributions to the plan as indicated in the plan's most recently available Form 5500; and
  - As of the end of the most recent annual period presented:
    - Whether a funding improvement or rehabilitation plan had been implemented or is/was pending;
    - Whether the employer paid a surcharge to the plan and
    - A description of any minimum contribution that the employer will be required to make in the future, either as required by a collective bargaining agreement, by statute or by other contractual obligations, if applicable.

In establishing the above requirements, the FASB assumed that other information about a plan will be publicly available through Form 5500. If other information about a plan is not publicly available, employers must also disclose the following information in a separate section of the table:

- A description of the nature of the plan benefits;
- A qualitative description of the extent to which the employer could be responsible for the obligations of the plan, including benefits earned by employees during employment with another employer; and
- Other quantitative information to help users understand the financial information about the plan, including total plan assets, the actuarial present value of accumulated plan benefits, and total contributions received by the plan. This information should be current as of the most recently available date, and need only be provided if available and if possible to obtain without undue cost and

effort. If this quantitative information cannot be obtained without undue cost and effort, an employer can omit this information and instead explain what information has been omitted and why, and provide any qualitative information as of the most recently available date that would help users understand the financial information that has otherwise been disclosed.

An employer must also disclose, in tabular format, for each annual period for which a statement of income or activities is presented, its total contributions made to all plans that are not individually significant, and its total contributions made to all plans in the aggregate. In addition, an employer must describe the nature and effect of any significant changes that affect comparability of total employer contributions over different periods. Examples of significant changes that affect comparability include the occurrence of a business combination or divestiture or a change in the contractual employer contribution rate.

#### **No Requirement to Disclose Withdrawal Liability Unless Probable or Reasonably Possible**

The Exposure Draft the FASB issued in September 2010 would have required employers to disclose their withdrawal liability as a proxy for the employer's share of the plan's funded status. But there were numerous comments that including this information would be too costly and would not necessarily provide an accurate assessment of an employer's share of a plan's underfunding. As a result, the FASB did not include this requirement in the Update and the current rules regarding disclosure of withdrawal liability remain effective: employers must disclose withdrawal liability only if the likelihood of its occurrence is probable or reasonably possible.

#### **Requirements for Plans That Provide Postretirement Benefits Other Than Pensions**

If an employer contributes to a multiemployer plan that provides postretirement benefits other than pensions, the employer must disclose:

- The amount of contributions made to multiemployer plans that provide postretirement benefits other than pensions for each annual period for which a statement of income or activities is presented;
- A description of the nature of benefits provided and types of employees covered by the benefits, such as medical benefits provided to both active and retired employees; and
- A description of the nature and effect of any changes that affect comparability of total employer contributions from period to period, such as:
  - A business combination or divestiture, and
  - A change in the contractual employer contribution rate.

Employers contributing to multiemployer plans should review these new requirements carefully and prepare to comply with the Update by first determining what information they will need and how they can obtain it. Plan sponsors of multiemployer plans should consider how they will respond to a contributing employer's request for such information.

*Authored by [Mark E. Brossman](#), [Ronald E. Richman](#), [Susan E. Bernstein](#) and [Melissa A. Jacoby](#).*

If you need help with implementing procedures to comply with the FASB's new disclosure requirements, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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**New York**

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
+1 212.756.2000  
+1 212.593.5955 fax

[www.srz.com](http://www.srz.com)

**Washington, DC**

Schulte Roth & Zabel LLP  
1152 Fifteenth Street, NW, Suite 850  
Washington, DC 20005  
+1 202.729.7470  
+1 202.730.4520 fax

**London**

Schulte Roth & Zabel International LLP  
Heathcoat House, 20 Savile Row  
London W1S 3PR  
+44 (0) 20 7081 8000  
+44 (0) 20 7081 8010 fax

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