

From: [Marc Porter](#)
To: [Director - FASB](#)
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FASB Technical Director:

Regarding the Proposed Accounting Standards Update on Disclosure of Certain Loss Contingencies, my comments are set forth below.

INSURANCE RECOVERIES

I disagree with the guidance concerning insurance recoveries. I believe an entity should consider insurance recoveries in determining if a loss contingency should be disclosed. I also believe that an entity should be permitted to net expected insurance recoveries against contingent liabilities.

The insuring agreement of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01 10 01) reads:

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

The insurer's duties to defend the entity and pay the entity's legal obligation should not be ignored when the entity assesses the materiality of a loss contingency.

Here is an example of a typical insurance claim. Assume that:

- A customer slips and falls at the entity's retail store.
- The customer is injured, engages an attorney and sues the entity for \$500,000.
- The entity determines that its liability insurance fully covers the claim.

Because insurance is expected to fully cover the claim, the entity should be not required to accrue an estimated possible loss, record an equivalent insurance recovery or disclose the claim (based on a determination that the probability of a material loss to the entity is remote and not severe).

Under the proposed guidance, the example entity would likely determine that a \$500,000 lawsuit is material. Therefore the entity must accrue an estimated loss contingency, an insurance recovery and disclose all of the following:

1. The name of the court or agency in which the proceedings are pending.
2. The date instituted.
3. The principal parties to the proceedings.
4. A description of the factual basis alleged to underlie the proceedings.
5. The current status of the litigation contingency.

This example demonstrates that application of the proposed guidance to insured claims would result in unwarranted detail in financial statements and disclosures, and dilute important loss contingency information.

DISCLOSURE EXEMPTIONS FOR NONPUBLIC ENTITIES

I agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the proposed Update.

I also believe a disclosure exemption for information that could prejudice an entity's position in a legal proceeding should be provided for nonpublic entities. Many nonpublic entities are involved in only one legal dispute at any one time, and for such entities, aggregate disclosure isn't applicable. The Illustrative Disclosures of the Update are extremely detailed and the disclosure of certain information (e.g., discoverable information not provided to the plaintiff and the entity's rationale for its litigation contingency) could be detrimental to the settlement or outcome of litigation. Supplemental financial information may be obtainable by owners, lenders and sureties of nonpublic entities that is not available from public entities.

Respectfully submitted,

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