



• National Association of College and University Business Officers
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September 20, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: File Reference No. 1840-100

Dear Technical Director:

On behalf of the National Association of College and University Business Officers (NACUBO), we submit the following comments on the proposed Accounting Standards Update, "Disclosure of Certain Loss Contingencies (Topic 450)" (the ASU). NACUBO's comments on the proposal were developed with input from our member institutions and our Accounting Principles Council (APC). The APC consists of experienced business officers from various types of institutions who, collectively, possess a thorough knowledge of higher education accounting and reporting issues and practices.

NACUBO is a nonprofit professional organization representing chief financial and administrative officers at more than 2,100 colleges and universities. In its capacity as a professional association, NACUBO issues accounting and reporting guidance for the higher education industry and educates over 2,000 higher education professionals annually on accounting and reporting issues and practices.

Overall Observations of the ASU

We recognize the Board's desire to provide guidance that will allow users of financial statements to better assess an entity's risks associated with loss contingencies. The disclosure information required by the ASU, however, could result in many pages of detailed information that would confuse the reader and potentially overstate the ultimate risk associated with loss contingencies, especially those related to litigation.

Question 1: Are the proposed disclosures operational?

We do not believe the proposed disclosures are operational because of the volume of information to be examined and the cost of the outside counsel that would be used to assemble that information. The potential volume of information required to be disclosed could be administratively burdensome for an entity to produce. For entities with only one or two loss contingencies, the level of detail required may be manageable. For other entities with a significant number of loss contingencies, gathering the data could be onerous. Higher education institutions often have outside attorneys handle most, if not all, of their litigation (both asserted and unasserted claims). The cost of having that outside counsel provide the amount of detail required by the ASU could be prohibitive.

Typically, universities, their counsel, and their auditors give only superficial attention to many claims, such as workers' compensation claims, that will be fully recoverable from insurance. We believe that the proposed standards will require in-house and outside counsel, as well as auditors, to consider these claims as well, further increasing the costs of implementing the proposed standards. Finally, the operability of the proposed disclosures is affected by the reluctance of legal counsel to provide any opinion on the potential outcome of claims, and management may not always be in a position to determine such outcome.

Question 2: Are the proposed disclosures auditable?

It is difficult to determine the amount of work that would be required to allow auditors to express an opinion on the proposed disclosures. Given the diminished value of confirmations over the past few years (i.e. they can be used to verify existence, but not value), how much would the auditors be able to rely on the letter provided by legal counsel and how much would they be required to independently substantiate? Any amount of work, in addition to the review of the legal letter, would likely increase audit fees which could have a significant impact on smaller entities.

Question 3: Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary?

No. An explicit exemption from disclosure of prejudicial information is necessary when dealing with loss contingencies. Not all information that would be required to be disclosed is generally available to the public. For example, information about asserted claims for which no lawsuit has been filed could be prejudicial to the entity if it were disclosed. While some contingencies could be aggregated, that wouldn't be the case for all and, again, non-public information may be required to meet the disclosure requirements under the ASU.

Question 4: Is the proposed effective date operational?

Many higher education institutions are conduit debt obligors and, thus, considered public entities for reporting purposes. Given, however, that most institutions have June 30 or later fiscal year ends, there is likely to be ample time to prepare for the implementation of the new disclosures.

Question 5: Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing of loss contingencies?

While we appreciate the need for timely, relevant information regarding loss contingencies, the disclosures under the ASU could be misleading to readers of the financial statements. Again, with regard to litigation, it is not unusual for a plaintiff to request damages far in excess of what they expect to receive. To include such information in the financial statements could cause readers to assume that the organization will likely have to pay that amount in the future. In addition, the number of cases which actually go to court is small as both plaintiffs and defendants wish to avoid the cost and unpredictability of a jury trial regardless of their guilt or innocence. As a result, most claims are settled out of court for amounts that can be substantially less than those initially claimed by the plaintiff. Most settlement agreements have nondisclosure requirements as to the amount actually paid, so no disclosure of the final settlement amount could be provided to readers. (See the discussion below regarding the tabular reconciliation.)

Question 6: Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures? Are there any other aspects of the amendments that should be applied differently to nonpublic entities?

We believe that both nonpublic and public entities should be exempt from the tabular reconciliation disclosures. In general, the tabular reconciliation is problematic. If, for example, there is only one contingency for which there is an accrual, highlighting the amount of change in a reporting period could be prejudicial. Were the claim to be subsequently settled out of court, the entity would be required to show the amount paid in cash and the amount, if any, of adjustment to the accrual. This would effectively violate any nondisclosure clause in the settlement agreement. Therefore, we believe that the requirement for a tabular reconciliation should be eliminated from the ASU.

Question 7: Do you agree with the deferral of the effective date for nonpublic entities?

We do not believe that a deferral for nonpublic entities is necessary. If deferral of the effective date is necessary for nonpublics, it should be extended to public entities as well.

In closing, we wish to express our appreciation for the opportunity to comment. We hope that the Board will address our concerns. We look forward to answering any questions the Board or the staff may have about our response. Please direct your questions to Sue Menditto at 202-861-2542 or sue.menditto@nacubo.org.

Sincerely,

Susan M. Menditto
Director, Accounting Policy
NACUBO