

# Defining Issues<sup>®</sup>

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## Alert

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## FASB Decisions on Loss-Contingency Disclosures

The FASB did not rule out the possibility of requiring companies to provide additional loss-contingency disclosures in 2009 financial statements even though a great deal of work remains to be done to finalize a new standard on those disclosures. The possibility of a standard effective in 2009 was discussed in the course of the Board's consideration of input on its exposure draft on loss-contingency disclosures.<sup>1</sup> The Board also identified an objective and principles for disclosures about litigation contingencies and began work on potential revisions to the exposure draft's provisions. It decided that a principle governing disclosures about litigation contingencies should be to focus on the contentions of the parties rather than on predictions about the outcome of the litigation, a change from the approach in the exposure draft.

### Disclosure Thresholds for Litigation Contingencies

The Board focused its discussion on litigation contingencies and will consider other types of loss contingencies at a later date.

**Asserted Claims and Assessments.** The Board decided to retain the requirement in existing GAAP to disclose asserted claims and assessments for which the likelihood of loss is "at least reasonably possible" and to clarify that "at least reasonably possible" is the equivalent of "more than remote." The likelihood of a future event is "remote" when the chance of the future event occurring is "slight." The Board also decided that "certain remote loss contingencies" should be disclosed and will discuss approaches to identifying those requiring disclosure at a future meeting. The exposure draft's approach would require disclosure of a remote loss contingency when the contingency is expected to be resolved in the near term and the outcome could have a severe impact on financial position, cash flows, or results of operations.

**Unasserted Claims and Assessments.** Existing GAAP requirements for disclosing unasserted claims and assessments will be retained, but the Board will consider adding interpretive guidance about those requirements. Companies are not currently required to disclose unasserted claims or assessments unless it is probable that a claim will be asserted and it is reasonably possible that the outcome will be unfavorable.

<sup>1</sup> Proposed FASB Statement, Disclosure of Certain Loss Contingencies, June 5, 2008, available at [www.fasb.org](http://www.fasb.org). The Board's consideration of input on the exposure draft took place during its August 19, 2009, meeting.



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**Possibility of Recoveries.** The Board decided that companies should not consider the possibility of recoveries from insurance or indemnification arrangements when assessing whether a contingency should be disclosed.

**Disclosure Objective and Principles**

The objective of litigation-contingency disclosures identified at the Board's meeting is to provide "qualitative and quantitative information about the loss contingency to enable a financial statement user to understand the nature of the contingency and its potential timing and magnitude." This revised objective differs from the exposure draft's objective, which was to provide disclosures to help users "in assessing the likelihood, timing, and amount of future cash flows" associated with the loss contingency.

Board members also agreed on three principles for disclosures about litigation contingencies.

1. Disclosures about litigation contingencies should focus on the contentions of the parties, rather than predictions about the future outcome.
2. Disclosures about a contingency should be more robust as the likelihood and magnitude of the loss increase and as the contingency progresses toward resolution.
3. Disclosures should provide a summary of information that is publicly available about a case.

These principles will presumably be used by the Board in developing requirements for specific qualitative and quantitative disclosures about litigation contingencies. The Board plans to develop an approach to disclosing nonprivileged quantitative information that would be relevant to estimating the potential loss from a loss contingency.

**Settlement Negotiations and Possible Recoveries.** The Board decided not to require entities to disclose information about settlement negotiations because those disclosures could affect litigation negotiations. The Board also decided that disclosures about possible recoveries from insurance or other sources related to litigation contingencies should be made when that information has been provided to the plaintiff.

**Future Deliberations**

The Board will continue its consideration of specific disclosure requirements for litigation contingencies and also address disclosures about other types of contingencies at future meetings. It is expected to give further consideration to the standard's potential effective date.

The descriptive and summary statements in this presentation are not intended to be a substitute for the minutes of the meeting, the proposed FASB Statement, or any other potential or applicable accounting literature or SEC regulations. Companies applying GAAP or filing with the SEC should apply the texts of the relevant laws, regulations, and accounting requirements, consider their particular circumstances, and consult their accounting and legal advisors.