



## SHEET METAL WORKERS' NATIONAL PENSION FUND

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Technical Director  
File Reference No. 1860-100  
FASB  
[director@fasb.org](mailto:director@fasb.org)

Re: Subtopic 715-80 and Topic 450

Dear Sir or Madam:

This comment is submitted on behalf of the Board of Trustees of the Sheet Metal Workers' National Pension Fund ("NPF") concerning the *Disclosure about an Employer's Participation in a Multiemployer Plan Draft* (hereinafter "Subtopic 715-80") issued on September 1, 2010. Subtopic 715-80, if implemented, along with implementation of *Disclosure of Certain Loss Contingencies Draft* (hereinafter "Topic 450"),\* could adversely affect many industries and their stakeholders. This letter focuses on the adverse consequences that will be visited upon multiemployer pension plans, like NPF, and the employers that participate in these plans.

NPF is a defined benefit multiemployer pension fund with over 4,100 employers and 137,000 participants located throughout the country. The vast majority of employers are very small, less than 20 employees. NPF primarily covers employers engaged in the building and construction industry. Under the ERISA's withdrawal liability provisions, an employer in the building and construction industry does not face withdrawal liability unless it ceases to have an obligation to contribute to a plan and continues to work in the construction industry. If a construction industry employer totally ceases operations it has no liability. If it sells its assets, it has no liability. Therefore, the circumstances in which an employer might face withdrawal liability in the construction industry are circumscribed. In addition, for very small employers, withdrawal liability may not reach de minimis thresholds prescribed under ERISA. 715-80 at BC10 fails to discuss this even though multiemployer plans predominate in the construction industry and make up the largest single group of multiemployer plans by industry.

Note in connection with Topic 450, the assessment of withdrawal liability generally lies within the direct control of an employer's management. A withdrawal commonly occurs when a company decides that it no longer wishes to employ a unionized workforce, or it

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\* Although the comment period for Topic 450 has passed, its relationship to SubTopic 715-80 makes comment unavoidable. As stated in 715-80 at B12, Topic 450 is "incremental" to Subtopic 715-80.

negotiates an agreement with a union to terminate contributions to a multiemployer fund. For these reasons and more, NPF respectfully submits that characterizing withdrawal liability as a loss contingency under Topic 450 is inappropriate because it is not the result of external events that are beyond the employer's control.

The first two questions posed in Subtopic 715-80 may categorically be answered NO:

Question 1: Do you agree that the proposed quantitative and qualitative disclosures will result in a more useful and transparent disclosure of an employer's obligations arising from its participation in a multiemployer plan? Why or why not? If not, what changes would you suggest to the proposed amendments?

Question 2: Do you believe that disclosing the estimated amount of the withdrawal liability, even when withdrawal is not at least reasonably possible, will provide users of financial statements with decision-useful information? Why or why not?

Defined benefit pension plans like NPF must have an annual actuarial valuation as of the first day of the plan year. For example, each year NPF's actuary issues a valuation which is premised on assets, liabilities, plan terms, legal requirements, and assumptions as of January 1. Part of this valuation is the determination of vested benefits as of the close of the preceding year, i.e. December 31. The amount of vested benefits is compared to the market value of assets and if the assets are insufficient, there are unfunded vested benefits which are the basis of withdrawal liability. To prepare a valuation requires the completion of annual financial statements, the collection of participant census and demographic data and a series of complex calculations. For most multiemployer pension plans, the valuation is not completed until eight months after the beginning of the plan year. In other words, a company who needs to report contingent withdrawal liability on its own financial statements cannot get current information in a timely fashion. In fact, the best most employers could hope for is an estimate that is 20 months old, that is from January of the preceding year. Given the volatility in financial markets, including 20 plus percent variations in the market value of assets between 2007 and 2009, the estimate is even more suspect. This means the information contemplated in 715-80-50-1 will be so out-of-date as to have little utility to the financial statement user.

For these reasons, a financial statement would be made less reliable by requiring companies to report a contingent loss contingency that cannot be accurately calculated. The effect of the impact on cash flow cannot not be reasonably anticipated either, given the fact that withdrawal liability is commonly paid in quarterly installments. The actual number of installments cannot be determined until a withdrawal actually occurs. In many cases, the withdrawn employer does not pay the full amount of the withdrawal liability assessment because ERISA terminates the obligation to pay quarterly installments at 20 years even though the assessment is not fully paid.

In Question 3, Subtopic 715-80 asks about implementation costs. They could be extraordinary for plans and for employers. NPF and several similar pension plans are national in scope. ERISA requires the pension plan to produce upon request, an estimate

of potential liability. Historically, about 100 employers out of 4,100 request an estimate on a regular basis. However, as a result of the publication of the Subtopic 715-80 and Topic 450, NPF has received about 75 such requests in the past month.

If all 4000 odd employers request assessments, NPF's 50-person staff cannot accommodate all those requests (especially as it is likely they would come in at the same time). Turning to Question 5, an effective date of December 15, 2010 would present significant implementation challenges. Moreover, many employers participate in more than one multiemployer plan. They may participate in both local and national plans within an industry (this is very common for NPF employers) or in plans across several industries. For example, a retail food operation may operate in a local area retirement plan for food workers, as well as, a national plan. It may also participate in plans for service workers and another for truckers. These employers will face enormous challenges in garnering material from all funds, many of whom lack the resources of larger national funds.

The "narrative information" required in sections 715-80-50-1A and 1B fail to grasp the enormity of the proposed narrative. This comment focuses on just a few of the several areas in which a narrative may be required. This section discounts the potential volume by suggesting that plan information might be aggregated. See also BC6. This is a hard concept for pension plan professionals to grasp given the wide disparity - to name just a very few - in "regulatory warning zone" responses, the timing of the release of improvement or rehabilitation plans and related schedules, funding levels, and fiscal years.

Plans may have reorganization plans, funding improvement plans, rehabilitation plans, or limited waivers of the necessity of adopting such plans. Funding improvement plans and rehabilitation plans also have one or more subsidiary schedules. Note that a plan which has entered a regulatory warning zone may not issue its funding improvement or rehabilitation plan until the last month of the plan year. ERISA requires pension plans to update and amend the improvement or rehabilitation plans and the schedules as actual experience dictates.

Note, for example that NPF's Rehabilitation Plan and Schedules for the 2010 Plan Year total 37 pages. These documents cannot be considered in isolation and require reference to the several hundred page plan and trust documents.

715-80-50-1B requirement's to describe "how benefit levels for plan participants are determined" is difficult and even if provided would shed no light on an employer's financial condition, its contingent liability or possible effects on cash flow. NPF, which is representative of many multiemployer benefits plans, has approximately 4000 *contract strings*. These strings represent different participant classifications. These classifications commonly have different contribution rates.

For some pension plans, contributions are made on a percentage of compensation, others at a set rate per hour or day or other period. Benefits accrue at different levels. In addition, plans can have different benefit plans for different classes of employees.

Benefits under funding improvement plans and rehabilitation plans schedules differ. The proposed requirement ignores the sheer volume and detail encompassed in describing benefit levels. Moreover, simply disclosing how benefit levels are determined will not translate into some meaningful finding of an employer's financial risk in a multiemployer plan. Benefit liabilities in the plan are subject to complex actuarial calculation, merely listing how benefits accrue will not illuminate this.

ERISA section 101(1) requires a plan to provide the estimated amount of an employer's withdrawal liability, as of the first day of the plan year, as well as, an explanation of how the estimate was calculated. As explained above, it is about eight months at soonest that an estimate can be given for a withdrawal taking place within the plan year. Subtopic 715-80 and Topic 450 requires much more than this. Given ERISA's complex and reticulated regulatory scheme, how can a pension plan conclude that providing this information is an appropriate use of plan assets? If a pension plan declined to provide the information, would that lead to a qualified opinion? Given the limited utility of the information and the cost of providing it, there is not a demonstrable benefit. Therefore, the standard expressed under the heading "Benefits and Costs," at BC 16 that "the benefits in providing financial statement users with information should justify the related costs to preparers, auditors, and other constituents," is clearly not met.

Please reconsider Topic 450 and Subtopic 715-80. NPF and other plans stand ready to provide any additional information which may aid your consideration. Your attention is appreciated.

Respectfully submitted,



Marc LeBlanc

cc: NPF Trustees