



December 5, 2016

Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: RIN 1210-AB63: Annual Reporting and Disclosure
Room N-5655
U.S. Department of Labor
200 Constitution Ave NW.
Washington, D.C. 20210

To Whom It May Concern,

These comments are submitted by the UAW Retiree Medical Benefits Trust (hereafter called the "Trust") in response to the proposed revisions to Form 5500 issued by the Employee Benefits Security Administration (EBSA) for public comment on July 21, 2016 (the "Proposed Revisions"). The Proposed Revisions seek to update Form 5500, including new questions relating to compliance with requirements added by the Patient Protection and Affordable Care Act.

The Trust was established on January 1, 2010 to provide health care coverage for United Auto Workers (UAW) retirees and dependents of GM, Ford, and Chrysler. The Trust manages three separate employee welfare benefit plans and is also a Voluntary Employees' Beneficiary Association (VEBA). The Trust files one Form 5500 for each employee welfare benefit plan that it sponsors, as well as one form for the staff of the Trust (four total).

The Trust appreciates the need to modernize Form 5500 and to provide greater transparency on the part of the regulated plans under ERISA. The Trust urges EBSA to consider several suggestions and requested clarifications to the Proposed Revisions, which we believe are fully consistent with ERISA's disclosure goals while minimizing the burden on plan sponsors and increasing transparency for participants.

Schedule C Revisions

The Proposed Revisions would modify Schedule C to include additional reporting on the service providers with which a plan contracts. Significantly, the revisions to Schedule C would appear to require a separate Schedule be created for each service provider about which the plan must report. The Trust believes this requirement makes the document more cumbersome. The Form 5500 for large plans, including most of the ones filed by the Trust, are already hundreds of pages long. This requirement will substantially increase the length of the filings and make it more difficult to compare

one service provider with another. The Trust urges EBSA to reconsider the requirement that each service provider be reported on a separate schedule.

Schedule H Revisions

The Proposed Revisions would add additional questions to Schedule H, increasing the level and specificity of plan reporting on the location and investment of plan assets. The Trust urges EBSA to provide clarifications so as to resolve any overlap between what is reported in Schedule H and what is reported in the schedule of assets.

In questions 5 through 14 of the Proposed Revisions, plans are asked about the investment of assets, particularly in investment vehicles that then invest in other assets or vehicles. In these questions, such as question 8 or question 14, the Trust urges EBSA to clarify at what level of assets plans should report. Should the reporting be at the fund level, or should it be at the level of assets of the fund in which the plan is invested? If an investment is in a vehicle that in turn invests in other investment vehicles, is the reporting for the plan at the level of the initial investment vehicle, at the investments of that investment vehicle, or some further sub-level of investment? The Trust would urge reporting at the initial investment level or at one level beneath the initial investment. The Trust also urges EBSA to clarify whether the proportion or level of ownership in a particular partnership or other vehicle would alter the required level of reporting.

In addition, the Trust suggests that the Form 5500 instructions should endorse the the most recently adopted accounting standards for the purposes of reporting a plan's investment. The preamble to the proposed revisions cites the updates made based on the Financial Accounting Standards Board (FASB) standards in 2010. The Trust urges EBSA to take the further step of endorsing the use of the FASB standards from 2015, specifically Accounting Standards Update No. 2015-07 and Accounting Standards Update No. 2015-12, with regards to the reporting of plan assets. Adopting these standards would increase consistency for plan reporting to different government agencies, clarify many of the specific questions about Schedule H (such as those posed above), and update the form to the latest accounting standards.

New Schedule J

Schedule J of the Proposed Revisions would introduce a number of new questions and reporting areas for welfare plans. We discuss some aspects of these proposed changes below.

- A. **“Employer Contributions.”** The Trust anticipates needing to complete Schedule J of the Proposed Revisions, but is unclear on the proper interpretation of parts of Question 4. Throughout Question 4, the proposed form uses the term “employer contributions.” The Trust does not fall under the definition of “employer” in § 3 of ERISA. The Trust was created by settlement agreements between the UAW and each of GM, Ford, and Chrysler (now FCA). After the initial lump sum funding by each automotive company, no further contributions have

flowed into or will flow into the three Trust plan funds from these employers. The Trust urges EBSA to clarify whether “employer contribution” as used in the Proposed Revisions would include only those contributions made in the reporting year or those contributions originating from the participant’s former employer, regardless of when that contribution occurred.

For many plans, going back and re-constructing past contributions would pose a significant burden. If historical reporting on prior years’ contribution were to be required, additional clarification would be needed on how far back to report. In other aspects (benefit spending, investment earnings, benefit accruals), the Form 5500 is focused on the most recent plan year. The Trust sees no advantage to single out employer contributions for different treatment in that respect.

For all these reasons, it seems appropriate to the Trust that the language be clarified to encompass only employer contributions received during the reporting year.

- B. Claims Processing Data.** Questions 18 through 21 seek information on the plan’s processing of claims, including aggregate counts on claims denied and those overturned on appeal. The Trust urges EBSA to clarify whether “health benefit claim” includes claims for services that are not medical in nature (dental or vision benefit claims, for example).

In addition, the rationale set forth in the proposed rule (RIN 1210–AB63) for requesting the information on the processing of claims is transparency to the plan participants, which stems from Sections 2715A and 2717 of the PPACA. The Trust’s three retiree plans are “retiree-only” plans and as such are exempt from a number of requirements created by the PPACA, often called the “insurance market reforms.” These sections (2715A and 2717) of the PPACA are both part of the “insurance market reforms,” from which retiree-only plans such as the Trust are exempt. The question on appeals is complicated in the case of retiree-only plans, as the plans have an appeal process, but that process has not been required to comply with the “insurance market reform” appeals provisions. If indeed those sections of the PPACA are the basis for Questions 18 through 21, the Trust urges EBSA to make clear that retiree-only plans are exempt from the questions on the processing of claims.

In addition, the Trust believes that Questions 18 through 21 represent a significant administrative burden that will inevitably increase the cost of administration for the Trust’s health plans. The Trust has estimated in the past that its TPAs process over 2.5 million claims annually. The Trust does not currently require the third party administrators for the Trust’s self-insured health plans to track and report on this information. Such tracking will result in additional costs passed to the Trust, which will in turn reduce the resources available to provide benefits to participants. This impact is particularly acute in the case of a retiree plan that does not have further contributions from employers. Without any sources of incremental

future funding, for the Trust it is literally the case that every dollar spent on compliance is a dollar less for participant benefits.

- C. **Compliance Reporting.** Another of the insurance market reforms that retiree-only plans are exempt from is the requirement to create and distribute Summaries of Benefits and Coverage or SBCs. In the revised Form 5500, Schedule J, Question 23, the Department asks plans to attest whether they are in compliance with the requirements for the Summary Plan Description (“Yes” or “No”) and whether they are in compliance with the requirements of the Summary of Benefits and Coverage (“Yes” or “No”). However, unlike Questions 24 through 30, Question 23 does not offer the option of a “N/A” answer. The Trust urges EBSA to add a similar “N/A” answer to Question 23 for the SBC portion.

Conclusion

The Trust supports the goal of greater transparency into the operations and activities of plans regulated under ERISA. The Trust believes the Proposed Revisions should provide additional clarity to plan sponsors resolving the ambiguities outlined above. The Trust would respectfully ask EBSA to provide the requested clarifications and to consider the suggestions made in these comments.

Respectfully submitted,



Mary Beth Kuderik
Chief Financial Officer
UAW Retiree Medical Benefits Trust