



**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**[Exemption Application No. L-12016]**

**Proposed Exemption for Certain Prohibited Transaction**

**Restrictions: United Automobile, Aerospace and Agricultural**

**Implement Workers of America (the UAW or the Applicant)**

**Located in Detroit, Michigan**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This proposed exemption would permit the receipt of a note by the UAW Retiree VEBA, as defined below, from the UAW, and the receipt of collateral on the note by the Retiree VEBA in connection with a court-approved settlement agreement.

**DATES:** *Comments due:* Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

*Exemption date:* If granted, this proposed exemption will be in effect on the date that the grant notice is published in the *Federal Register*.

**ADDRESSES:** All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L-12016 via email to e-OED@dol.gov or online through <http://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

**Comments:** Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can

request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption, and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the *Federal Register*. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

WARNING: All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a

comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

#### **PROPOSED EXEMPTION**

The Department is proposing to grant an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. As described in more detail below, the UAW is required to make certain contributions to the UAW Retirees Health Care

Plan (the Retiree Plan) pursuant to a court-approved settlement agreement. The Retiree Plan is funded through the UAW Retirees Health Care Trust (together with the Retiree Plan, the Retiree VEBA). The exemption would permit the receipt of a Note by the Retiree VEBA from the UAW, and the receipt of collateral on the Note by the Retiree VEBA from the UAW. The collateralized Note is intended to help ensure that the Retiree VEBA receives all the contributions it is due from the UAW pursuant to the settlement agreement. This proposed exemption would not affect or reduce the amount or types of benefits offered under the Retiree VEBA.

#### **SUMMARY OF FACTS AND REPRESENTATIONS<sup>1</sup>**

##### The UAW

1. The UAW is a labor union with approximately 669 active employees, as of November 1, 2021. As of December 31, 2022, the UAW had total assets of \$1,129,835,327.

##### The Union Supporting Parties

2. The UAW represents that to control the steadily increasing financial burden of certain UAW-sponsored retiree health programs (the UAW Retiree Health Programs),

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<sup>1</sup> The Department notes that availability of this exemption, is subject to the express condition that the material facts and representations contained in application L-12016 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

the UAW engaged in discussions with the Office of Professional Employees International Union Local 494 (OPEIU Local 494), the UAW Staff Council of International Representatives (UAW Staff Council), and other unions (together, the Union Supporting Parties) before 2013. These discussions led to negotiated changes regarding future benefits for then-current employees, future retirees, and new hires. The UAW represents that these negotiated changes were inadequate to resolve the serious financial difficulties posed by the increasing cost of providing retiree health care. Therefore, in 2013, the UAW announced additional unilateral modifications to the UAW Retiree Health Programs that were implemented without agreement with current retirees or the unions that represented those retirees.

3. According to the UAW, the Union Supporting Parties ultimately objected to these unilateral modifications and subsequently entered into extensive negotiations with the UAW. The negotiations led to a June 2014 Memorandum of Understanding (the MOU) that set out detailed terms and conditions for the creation and funding of a Retiree VEBA and the payment of retiree health benefits to the participants and beneficiaries previously covered under the UAW Retiree Health Programs. The MOU was conditioned upon the negotiation and court approval of a final settlement agreement.

## Court-Approved Settlement Agreement

4. In May 2014, the Union Supporting Parties and three individuals who were seeking to represent the UAW's retirees and current and former unrepresented employees eligible for current and future benefits from the UAW Retiree Health Programs filed a class action challenging the UAW's 2013 unilateral modifications to the UAW Retiree Health Programs.<sup>2</sup> Subsequent negotiations among all the parties resulted in a settlement agreement (the Settlement Agreement), which refined and amplified the basic agreements set out in the June 2014 MOU. The Court issued a final order approving the Settlement Agreement on November 6, 2015, and the UAW Retiree Health Programs were subsequently terminated on or about December 17, 2015.<sup>3</sup>

## Funding the Retiree VEBA

5. Pursuant to the Settlement Agreement, the UAW committed to contributing approximately \$354.5 million to

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<sup>2</sup> This case was filed on December 22, 2014, in the United States District Court for the Eastern District of Michigan (the Court). See *Office and Professional Employees International Union Local 494, et al v. United Automobile, Aerospace, and Agricultural Implement Workers of America*, Civil Action No. 2:14-cv-14868-DPH-EAS (E.D. Michigan).

<sup>3</sup> The UAW Retiree Health Programs included all UAW-sponsored programs that provided eligible retirees with post-employment medical benefits (including hospital, surgical, medical, prescription drugs, vision, dental, hearing, Medicare Part B reimbursement, and any other reimbursement or expenditure with respect to such benefits) under the terms of applicable collective bargaining agreements, benefit plans and programs, pension plan documents, letters of agreement and understandings, and documents reflecting terms of employment with the UAW.

the Retiree VEBA.<sup>4</sup> On December 17 and December 23, 2015, the UAW contributed a total of \$240,730,693.06 to the Retiree VEBA. Under the terms of the Settlement Agreement, the UAW thereafter owed \$134,720,000 to the Retiree VEBA.<sup>5</sup>

#### The Note

6. The parties to the Settlement Agreement negotiated certain protections for the participants and beneficiaries of the Retiree VEBA.<sup>6</sup> The protections include a note (the Note), to be issued by the UAW in favor of the Retiree VEBA if this exemption is granted. The Note will have a principal amount of \$134,720,000, a 15-year term, an interest rate of 5.5% per year, and require the UAW to make sixty (60) equal quarterly installment payments to the Retiree VEBA according to the amortization schedule provided by UAW's actuary.

7. The Note must reflect all of the terms set forth in the Settlement Agreement regarding the UAW's contribution obligations, including the conditions and

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<sup>4</sup> Specifically, the payment obligation of the UAW to the VEBA equals: (1) \$346,000,000, adjusted to reflect the final number of participants and their coverage code and claims paid by the UAW from January 1, 2013, through the implementation date of the Settlement Agreement, plus interest on that adjusted amount, and (2) \$8,500,000 to fund administrative expenses.

<sup>5</sup> This amount reflected the difference between the UAW's initial contribution amount and the UAW's final total contribution commitment (adjusted as set forth in footnote 4).

<sup>6</sup> The Applicant notes that the protections that are the subject of this exemption do not become an enforceable part of the Settlement Agreement unless the Department grants this proposed exemption.

rights regarding "acceleration" and "default."<sup>7</sup> If the UAW defaults in making any installment payment, or upon a reorganization of the UAW, or upon the sale of any real estate of the UAW or of its closed locals (or its or their building corporations), the Retiree VEBA will have the right to declare an acceleration of all, or a portion of, the UAW's unpaid contribution commitment.<sup>8</sup> In addition, if the UAW violates the debt limitation and/or subordination requirements of the Settlement Agreement,<sup>9</sup> the Retiree VEBA will have the right to declare the full outstanding principal amount of the UAW's contribution commitment immediately due and payable, with interest.

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<sup>7</sup> Under the terms of the Settlement Agreement, a default occurs when a failure to make payment of any installment when due under the Installment Payment Obligation, as defined below, is not cured on or within sixty (60) days after the scheduled due date.

<sup>8</sup> With respect to the term "close affiliates," the Applicant states that Section 6(d) of the Settlement agreement provides that the acceleration provision applies upon the sale of "any real estate formerly owned by closed UAW Locals or their building corporations" (in addition to upon the sale of any real estate formerly owned by the UAW or its building corporation).

<sup>9</sup> Limitations on new debt: The UAW shall not incur new indebtedness for borrowed money (except for debt subordinated to that of the New VEBA) while the Installment Payment Obligation remains outstanding, except for: (a) short-term (12 months or less) lines of credit or similar credit facilities, in amounts consistent with past UAW practice, incurred for the purpose of strike support; (b) debt incurred in a cumulative amount not to exceed \$10 million, escalated at five percent annually from the Final Effective Date; (c) debt incurred to pay minimum required contributions under Section 430 of the Internal Revenue Code, contributions required to prevent the application of limits on benefits and benefit accruals under Section 436 of the Internal Revenue Code, or contributions required to avoid the filing requirements ("4010 filings") as specified by ERISA section 4010. The UAW shall notify the New VEBA in writing in the event that the UAW incurs any new indebtedness which exceeds the limitations described in this paragraph.

## The Mortgage

8. The Note is collateralized by a mortgage lien (the Mortgage Lien), which is a first priority security interest on the Black Lake Property (including any present or future rents or securities deposited thereunder).<sup>10</sup> The Black Lake Property is located in Onaway, MI 49765, and consists of nine improved parcels of real property. As reported on the UAW's Form LM-2, the value of the Black Lake Property for the year 2022 was \$107,015,388.

9. Under the terms of the Settlement Agreement, the UAW is responsible for paying all taxes levied or assessed with respect to the Black Lake Property through its wholly owned subsidiary, the Union Building Corporation (the UBC), and the UAW must maintain property insurance on the Black Lake Property. If the UAW, through the UBC, seeks to sell the Black Lake Property, or any portion thereof: (a) the sale must be for a purchase price not less than the appraised value established by an independent professional real estate valuation firm,<sup>11</sup> within 30 days of a purchase agreement for the sale of such homesite and surrounding land; and

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<sup>10</sup> All persons or entities who have or may acquire an interest in the Black Lake Property must have notice of, and be bound by, the terms of the Note. No party will be entitled to any rights thereunder without the written consent of the Retiree VEBA.

<sup>11</sup> As noted below, the exemption requires a valuation of the Black Lake Property by a Qualified Independent Appraiser if and when the Black Lake Property is transferred to the Retiree VEBA.

(b) the Independent Members may not release the Retiree VEBA's Mortgage Lien on the Black Lake Property unless and until the UAW makes all the commitments necessary to allow the Independent Members to conclude, consistent with their duties under ERISA section 404(a), that the sale of such property does not materially increase the risk borne by the Retiree VEBA. Such commitments may include the pre-payment of a portion of the installment payment obligation or the provision of alternative collateral.

10. The UAW must contribute 100% of the net proceeds from the sale of all or any portion of the Black Lake Property, to the Retiree VEBA (i.e., the amount of proceeds from the sale of the property that exceeds the costs associated with the property).<sup>12</sup>

#### The Royalty Security

11. The Note is further collateralized by the Royalty Security set forth in a security agreement between the UAW and the Retiree VEBA, dated December 8, 2014 (the Security Agreement). Under the Security Agreement, the UAW must immediately assign a first priority security interest to the Retiree VEBA equal to 30% of the Royalty Security received or receivable from

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<sup>12</sup> The Applicant represents that Cabin No. 4 at the Black Lake Property, along with an immediately adjacent parcel, were listed by Thomas Duke Realtors and sold in 2021 for \$1,100,000, to a party independent of the UAW. No amount was due to the Retiree VEBA because there were no net proceeds from the sale.

time to time from the UAW's member credit card program, upon an uncured default on the UAW's installment payment obligation.

As reported on the UAW's Form LM-2, the value of the credit card royalty payments for the year 2022 was \$405,732.

12. The terms of the Note, Mortgage Lien, and Royalty Security may not be modified during the duration of the UAW's obligation to the Retiree VEBA.

#### The Committee

13. The Retiree VEBA is controlled by an eight-member committee (the Committee) that acts as the named fiduciary of the Retiree VEBA and has the authority to determine the retiree health benefits that are provided under the Retiree VEBA. The Committee is composed of: four Independent Members;<sup>13</sup> one member appointed by the UAW; and three members appointed by Unions whose eligible retirees have, or will have, health care benefits through

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<sup>13</sup> Section 1.07 of the UAW Retirees Health Care Trust agreement (the Trust Agreement) defines an Independent Member as "[a]n individual person who serves as a member of the Committee and is not an officer or employee of the UAW or the Unions and does not have any other relationship with the UAW or the Unions that would compromise his or her independence, who satisfies the requirements of Section 9.01 of the Trust Agreement, and whose experience in such fields, without limitation, as health care, employee benefits, asset management, human resources, labor relations, economics, law, accounting or actuarial science indicates a capacity to fulfill the powers and duties of Article IX in the manner described in Section 10.11, and wherever practicable, helps to provide a range of relevant experience to the Committee."

the Retiree VEBA (the Union-Appointed Members).<sup>14</sup> With respect to the Committee's Union-appointed Members, two are appointed by UAW Staff Council and one is appointed by OPEIU Local 494. The Committee Chair is (i) chosen by the Committee members and required to be one of the Independent Members and (ii) given two votes (except with respect to the selection of a successor Chair).<sup>15</sup>

14. Of the Committee's initial four Independent Members, three were previously approved by the Court in connection with the Settlement Agreement. The Committee's Independent Members are selected and thereafter retain their position after receiving a majority of the votes cast by the other Committee members. The votes are allocated three each to the other Independent Members (including the Chair) and the UAW-appointed member and one each to the OPEIU Local 494-appointed member and the two UAW Staff Council-appointed members.<sup>16</sup> Therefore, the vote of the UAW-appointed member is not required for the selection of a successor Independent Member. In the event of a vacancy in an Independent Member position, the other Independent

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<sup>14</sup> The Applicant states that, as of July 21, 2023, the current Independent Members of the Committee are Gary Petroni, Gary Mann, Jessica Gubing, and Francine Parker, (Committee Chair), and the non-Independent Members are James King (appointed by Staff Council), Scott Andrews (appointed by Staff Council), Janice Caruso (appointed by OPEIU), and Renee Turner Baily (appointed by UAW).

<sup>15</sup> The initial Chair of the Committee was selected by the UAW and the Union Supporting Parties and designated in the final approval order entered by the Court. See the Settlement Agreement, Section 4(B), Doc. 19-1, Pg 20 of 82. Court Order, Doc. 38, Pg 33 of 35.

<sup>16</sup> Trust Agreement, Section 9.05(a).

Members, the UAW-appointed member, and the other non-independent members (voting as described in Section 9.05(a) of the Trust Agreement), shall select the successor Independent Member.”

15. Each Independent Member serves a three-year term, and the terms are staggered. Because the terms are staggered, the Committee votes on at least one member position every year. Vacancies are filled by the Committee pursuant to the voting rules set forth in the Trust Agreement.

16. The Independent Members have sole and exclusive control over the Note, the Mortgage Lien, and the Royalty Security, in order to foreclose or realize on the Black Lake Property and the Royalty Security upon an uncured default on the UAW’s installment obligation.

17. No one other than the Independent Members, or their delegate, may make any decisions with respect to the Collateral.

18. The Department notes that the Independent Members must exercise their duties with respect to such instruments prudently and solely in the interests of the participants and beneficiaries of the Retiree VEBA, consistent with their fiduciary duties under ERISA section 404.

19. The Applicant seeks an exemption so that the Retiree VEBA may: (1) acquire and hold the Note, Mortgage Lien, and Royalty Security; and (2) as needed, exercise its rights granted under the Note, Mortgage Lien, and Royalty Security. An exemption is necessary because these proposed transactions would violate various provisions of ERISA. Specifically, ERISA section 406(a)(1)(A) prohibits a plan fiduciary from engaging in any sale or exchange of property between the plan and a "party in interest." ERISA section 3(14)(D) defines the term "party in interest" to include an employee organization any of whose members are covered by such plan. Thus, the UAW is a party in interest with respect to the Retiree VEBA, because it is an employee organization whose members are covered by the Retiree VEBA.

20. The acquisition of the Note by the Retirement VEBA from the UAW would constitute an exchange between the Retiree VEBA and a party in interest that would violate ERISA section 406(a)(1)(A).

21. ERISA section 406(a)(1)(B) prohibits loans or extensions of credit between a plan and a party in interest. A Note issued by the UAW and held by the Retiree VEBA would represent an extension of credit that violates ERISA section 406(a)(1)(B).

22. ERISA sections 406(a)(1)(E) and 407(a) prohibit a fiduciary from acquiring or holding on behalf of a plan

an employer security or any employer real property that is not a "qualifying employer security" or "qualifying employer real property," as defined by ERISA section 407(d)(5). The Note and Royalty Security may be characterized as a "security" issued by the UAW that is not stock, a marketable obligation, or an interest in a publicly traded partnership, and the Mortgage Lien might be characterized as an interest in "employer real property" that does not satisfy the requirements of ERISA section 407(d)(4) (geographic dispersion, suitable for more than one use, etc.). Therefore, the acquisition of the Note and the Royalty Security by the Retiree VEBA from the UAW may violate ERISA sections 406(a)(1)(E) and 407(a).

#### Conditions of the Proposed Exemption

23. The requirements of this proposed exemption include all of the material terms of the Note and the Collateral, as embedded in the Settlement Agreement, which were approved by the Court. The Independent Members must represent the Retiree VEBA for all purposes with respect to the Covered Transactions and ensure that each exemption condition is met, consistent with their fiduciary duties under ERISA section 404.

24. The Retiree VEBA must develop written policies and procedures designed to ensure that the Independent Members prudently monitor the UAW's payment obligation to

the Retiree VEBA and the UAW's marketing and/or sale of all or a portion of the Black Lake Property. In addition, as soon as reasonably possible following any date the UAW defaults on its payment obligation (and also fails to correct such default), and as needed or as required thereafter, the Independent Members must engage a Qualified Independent Appraiser to value the Note, Mortgage Lien, and/or the Royalty Security, consistent with their fiduciary duties under ERISA section 404. The Independent Members must also ensure that the Retiree VEBA receives all that it is due under the terms of the Settlement Agreement from the sale of any of the Collateral, in a timely fashion, in order to offset the outstanding principal balance due under the Note.

25. On an annual basis, beginning on the date this exemption is granted, the Committee Chairperson must provide the Department with a written certification that the Chairperson monitored the Note, the Collateral, the Security Agreement, and the terms of this exemption, consistent with their fiduciary duties under ERISA section 404. The certification must be provided within 30 days of the end of the period to which it relates.

26. In the event the UAW defaults on the Installment Payment Obligation, the Committee Chairperson must submit a written report to the

Department providing: (1) a certification that each condition of the exemption has been met; (2) a complete description of any foreclosure and liquidation transactions; (3) all documentation necessary to demonstrate that all relevant conditions applicable to the transaction(s) have been met; and (4) if the Retiree VEBA does not foreclose on the Collateral, a complete explanation of the Independent Members' rationale for not taking such action. The report must be submitted to the Department no later than 90 days following a default on the Installment Payment Obligation.

#### Statutory Findings

27. The Proposed Exemption is "Administratively Feasible."

The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the exemption stems from, and is consistent with, a Settlement Agreement that was approved by the Court as being appropriate and fair. The exemption also requires oversight and monitoring by the Committee Chairperson, who is independent of the UAW, and a detailed report to the Department if the Retiree VEBA forecloses on the Collateral.

28. The Proposed Exemption is "In the Interest of the Retiree VEBA."

After reviewing the exemption application, as required by ERISA section 408(a), the Department has tentatively determined that the proposed exemption is in the interest of the Retiree VEBA because, among other things, the Covered Transactions would provide the Retiree VEBA with additional authority to enforce the UAW's contribution promises, increasing the likelihood that the Retiree VEBA's funding will be sufficient to achieve its intended purpose of providing lifetime retiree health benefits to its participants and beneficiaries. It is the Department's understanding that, if this exemption is not granted the sole consequence to the Retiree VEBA is that the Retiree VEBA will lose the security of the Note and the Collateral, and the Settlement Agreement would not otherwise be affected.

29. The Proposed Exemption is "Protective of the Retiree VEBA." The Department has tentatively determined that the proposed exemption is protective of the rights of the Retiree VEBA's participants and beneficiaries because, among other things, the Covered Transactions are limited in scope and tailored for the exclusive purposes of providing the Independent Members with direct legal rights to enforce the UAW's contribution promises under the Note, Mortgage Lien, and Royalty Security.

## NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed five-year exemption in the *Federal Register*. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed five-year exemption in the *Federal Register*. All comments will be made available to the public.

**Warning:** If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA

and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

#### **PROPOSED EXEMPTION**

Based on the facts and representations set forth in the application, the Department is proposing to grant an exemption under the authority of ERISA section 408(a) and in accordance with its exemption procedure regulation<sup>17</sup> as follows:

##### **Section I. Definitions**

(a) The term "Black Lake Property" means a parcel of real property owned by the UAW situated in the Township of Waverly, County of Cheboygan, State of Michigan, as described in detail in Exhibit A to the Mortgage Lien.

(b) The term "Committee" means the eight-member committee that controls and acts as the named fiduciary

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<sup>17</sup> 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

of the Retiree VEBA. One Committee member is appointed by the UAW. The remaining Committee members are four Independent Members, and three members who are appointed by the Unions whose eligible retirees have, or will have, health care benefits through the Retiree VEBA (the Union-appointed Members). The Committee Chair: is chosen by the members of the Committee; is required to be one of the Independent Members; and is given two votes (except with respect to the selection of a successor Chair).

(c) The term "Court" means the United States District Court for the Eastern District of Michigan.

(d) The term "Final Effective Date" means the date on which any appeals from, or other challenges to (i) an order obtained from the Court approving and incorporating the Settlement Agreement in all respects on a class-wide basis as set forth in Section 15(b) of the Settlement Agreement and (ii) a final order entered by the Court certifying the Litigation as a non-opt out class action, with the class defined in Section 1 of the Settlement Agreement.

(e) The term "Independent Members" means four individuals on the Committee designated as independent members. An Independent Member may not be an officer or employee of the UAW or the other Unions or have any other relationship with the UAW or the other Unions that would compromise his or her independence.

(f) The term "Implementation Date" means the date that

is ten days after the Final Effective Date.

(g) The term "Installment Payment Obligation" means the payment of an amount, as described in Section 6(C)(iii) of the Settlement Agreement, to the Retiree VEBA in equal installment payments over a term of fifteen (15) years, at an interest rate of 5.5% per annum beginning on the Implementation Date, compounded quarterly, reduced by 2 basis points for each \$1 million in accelerated payments made by the UAW.

(h) The term "Litigation" means *Office and Professional Employees International Union Local 494, et al v. United Automobile, Aerospace, and Agricultural Implement Workers of America*, Civil Action No. 2:14-cv-14868-DPH-EAS (E.D. Michigan).

(i) The term "Mortgage Lien" means a first mortgage lien granted by the UAW on the Black Lake Property to secure payment of the Note.

(j) The term "Note" means a note issued by the UAW consistent with the terms of the Settlement Agreement.

(k) The term "Qualified Independent Appraiser" means any individual or entity with appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the Retiree VEBA regarding the particular asset or property appraised in the report, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its

affiliates.<sup>18</sup>

(l) The term "Retiree Plan" means UAW Retirees Health Care Plan.

(m) The term "Retiree VEBA" means the UAW Retirees Health Care Trust together with the Retiree Plan.

(n) The term "Royalty Security" means a first priority security interest in 30% of future credit card royalties and/or other fees or amounts payable to the UAW under various licensing agreements to which the UAW is a party in connection with its member credit card programs.

(o) The term "Settlement Agreement" means the settlement agreement that followed the Litigation.

(p) The term "UAW" means United Automobile, Aerospace and Agricultural Implement Workers of America.

(q) The term "UBC" means the Union Building Corporation, a Michigan nonprofit corporation that is wholly owned by the UAW.

(r) The term "Unions" means, collectively, the following unions: the UAW; Staff Council of International Representatives; Office and Professional Employees International Union, Local Union 494; International Union, Security, Police and Fire Professionals of America Amalgamated Local 119; Staff Lawyers Union; and the

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<sup>18</sup> The Qualified Independent Appraiser must meet the requirements described at 29 CFR 2570.31(i) at 76 FR 66645 (October 27, 2011). Specialized statements from the Qualified Independent Appraiser must meet the requirements of 29 CFR 2570.34(c) at 76 FR 66647 (October 27, 2011).

Newspaper Guild/Communications Workers of America Local  
34022.

## **Section II. Covered Transactions**

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), and 407(a) shall not apply effective as of the date a final exemption is published in the *Federal Register*, to:

(a) The acquisition by the Retiree VEBA of: (1) the Note; (2) the Mortgage Lien; and (3) the Royalty Security to secure payment of the Note;

(b) the holding by the Retiree VEBA of the Note, Mortgage Lien, and Royalty Security; and

(c) the exercise by the Retiree VEBA of the rights granted under the Note, Mortgage Lien, and Royalty Security.

## **Section III. Conditions**

(a) The terms of the Note, the Mortgage Lien and the Royalty Security are consistent with the terms of the Settlement Agreement that was approved by the United States District Court for the Eastern District of Michigan on November 6, 2015, after the Court found the Settlement Agreement to be appropriate and fair to the Retiree VEBA.

(b) The Independent Members represent the Retiree VEBA for all purposes with respect to the Covered Transactions and ensure that each exemption condition is met consistent with their fiduciary duties under ERISA section 404;

(c) The Independent Members have sole and exclusive control over the Note, the Mortgage Lien, and the Royalty Security, in order to foreclose or realize on the Black Lake Property and the Royalty Security (collectively, the Collateral) upon an uncured default on the UAW's installment obligation.

(d) The UAW immediately assigns a first priority security interest to the Retiree VEBA equal to 30% of the Royalty Security received or receivable from time to time from the UAW's member credit card program, upon an uncured default on the UAW's installment payment obligation.

(e) If the UAW seeks to sell all or a portion of the Black Lake property, the Independent Members will not release the Retiree VEBA's Mortgage Lien on the Black Lake Property unless and until the UAW makes all the commitments necessary to allow the Independent Members to conclude, consistent with their duties under ERISA section 404(a), that the sale of such property does not materially increase the risk borne by the Retiree VEBA. Such commitments may include the pre-payment of a portion of the installment payment obligation or the provision of alternative collateral.

(f) Any proceeds from the sale of the Black Lake Property by the UAW, or from the Royalty Security, as required by the Settlement Agreement and Security

Agreement, during the period during which the UAW owes installment payments to the Retiree VEBA (and up to the total amount of indebtedness), must be immediately paid to the Retiree VEBA to offset the outstanding principal balance due under the Note.

(g) The UAW, through the UBC, remains responsible for the payment of all taxes levied or assessed with respect to the Black Lake Property, and the UAW, through the UBC, must maintain property insurance on the Black Lake Property at all times.

(h) All persons or entities who have or may acquire an interest in the Black Lake Property must have notice of and be bound by the terms of the Note. No party will be entitled to any rights thereunder without the written consent of the Retiree VEBA.

(i) The terms of the Note, Mortgage Lien, and Royalty Security may not be modified during the duration of the UAW's obligation to the Retiree VEBA.

(j) The Retiree VEBA must prudently develop written policies and procedures designed to ensure that the Independent Members prudently monitor the UAW's payment obligation to the Retiree VEBA, as well as the UAW's marketing and/or sale of all or a portion of the Black Lake Property.

(k) The Independent Members must engage a Qualified Independent Appraiser to value the Note, Mortgage Lien,

and Royalty Security as soon as reasonably possible following the date the UAW defaults on its payment obligation and fails to correct such default, and as needed or as required thereafter as determined by the Independent Members consistent with their fiduciary duties under ERISA, with the fees of such Qualified Independent Appraiser to be paid by the Retiree VEBA.

(l) Annually on the first day after the date this exemption is granted, the Committee Chairperson must provide the Department with a signed certification attesting that the Independent Members monitored the Note, the Collateral, the Security Agreement, and the terms of this exemption consistent with their fiduciary duties under ERISA section 404. The first certification must include the written policies described in condition (j). The certification must be provided within 30 days after the end of the period to which it relates.

(m) In the event the UAW defaults on the Installment Payment Obligation the Committee Chairperson must submit a written report to the Department providing: (1) a certification that each condition of the exemption has been met; (2) a complete description of any foreclosure and liquidation transactions; (3) all documentation necessary to demonstrate that all relevant conditions

applicable to the transaction(s) have been met; and  
(4) if the Retiree VEBA does not foreclose on the Collateral, a complete explanation of the Independent Members' rationale for not taking such action. The report must be submitted no later than 90 days following the date the UAW defaults on its Installment Payment Obligation.

Exemption date: If granted, this proposed exemption will be in effect on the date that the grant notice is published in the *Federal Register*.

Signed at Washington, DC, this 17<sup>th</sup> day of August, 2023.

**George Christopher Cosby,**  
*Director,*  
*Office of Exemption*  
*Determinations,*  
*Employee Benefits Security*  
*Administration,*  
*U.S. Department of Labor.*

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