

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-70,460]

**Delphi Steering Including On-Site  
Leased Workers From ACRO Service  
Corporation, et al.; Amended  
Certification Regarding Eligibility To  
Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 14, 2009, applicable to workers of Delphi Steering, including on-site leased workers from Bartech and Securitas, Saginaw, Michigan. The notice was published in the **Federal Register** on September 2, 2009 (74 FR 45477). The notice was amended on October 7, 2009 to include on-site leased workers. The notice was published in the **Federal Register** on October 20, 2009 (74 FR 53760-53761).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of steering systems and components such as steering columns, gears, pumps and electronic power steering systems.

The company reports that on-site leased workers from Interim Health Care were employed on-site at the Saginaw, Michigan location of Delphi Steering. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Interim Health Care working on-site at the Saginaw, Michigan location of Delphi Steering.

The amended notice applicable to TA-W-70,460 is hereby issued as follows:

All workers of Delphi Steering, including on-site leased workers from Bartech, Securitas, Acro Service Corp., Aerotek, Inc., Continental, Inc., Dynamic Corp., G-Tech Professional Staffing, Inc., GlobalEdge Technologies, Inc. (formerly CAE Tech), Gonzalez Contract Services, Integrated Partners Group LLC, Kelly Services, Manpower, Inc., Rapid Global Business Solutions, Inc., TAC Worldwide, Trialon Corp., Trison Business Solutions, Wright K. Technologies and Interim Health Care, Saginaw, Michigan, who became totally or partially separated from employment on or after May 20, 2008, through July 14, 2011, and all workers in the group threatened with total or partial separation from employment

on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 10th day of November 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

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**BILLING CODE 4510-FN-P**

**DEPARTMENT OF LABOR****Employee Benefits Security  
Administration**

[Application No. L-11575]

**Notice of Proposed Individual  
Exemption Involving Ford Motor  
Company, Located in Detroit, MI**

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed individual exemption.

This document contains a notice of pendency (the Notice) before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the UAW Ford Retirees Medical Benefits Plan (the Ford VEBA Plan) and its funding vehicle, the UAW Retiree Medical Benefits Trust (the VEBA Trust), (collectively the VEBA).<sup>1</sup> The proposed exemption, if granted, would affect the VEBA, and its participants and beneficiaries.

**DATES:** *Effective Date:* If granted, this proposed exemption will be effective as of December 31, 2009.

**DATES:** Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within 40 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington

<sup>1</sup> Because the Ford VEBA Plan will not be qualified under section 401 of the Internal Revenue Code of 1986, as amended (the Code), there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

DC 20210, Attention: Application No. L-11575. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: [ford@dol.gov](mailto:ford@dol.gov), or by FAX to (202) 219-0204 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-1513, 200 Constitution Avenue, NW., Washington, DC 20210. Comments and hearing requests will also be available online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, at no charge.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

**FOR FURTHER INFORMATION CONTACT:** Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8553. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This document contains a notice of proposed individual exemption from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of ERISA. The proposed exemption has been requested in an application filed by the Ford Motor Company (Ford or the Applicant) pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

## Summary of Facts and Representations<sup>2</sup>

### 1. The Applicant

Ford and its subsidiaries have been engaged primarily in worldwide automotive production and marketing operations. Ford designs, manufactures, and markets vehicles worldwide, with its largest operating presence in North America. Ford maintains its headquarters in Dearborn, Michigan. As of December 31, 2008, Ford had approximately 71,000 active employees in the United States, of whom approximately 42,000 are represented by the UAW and other unions. Approximately 285,000 retirees and dependents in the U.S. receive retiree health benefits from Ford, and of this total, approximately 196,000 are hourly retirees and spouses, surviving spouses, and eligible dependents. As of December 31, 2008, Ford had total assets on its consolidated balance sheet of \$218 billion.

### 2. Other Parties in Interest in the Covered Transactions

In addition to the Applicant, the parties in interest involved in the covered transactions described herein are (1) the committee that manages the VEBA Trust and is the administrator and a named fiduciary of the Ford VEBA Plan (the Committee), (2) an independent fiduciary to be engaged by the Committee to manage employer securities held by the VEBA Trust (the Independent Fiduciary), (3) the trustee of the VEBA Trust, State Street Bank and Trust Company (the Trustee), and (4) the Ford-UAW Holdings LLC (described below). The role of each of these parties is described in detail below.

### 3. Background

Ford historically has provided retiree medical benefits to former UAW represented employees under the Hospital-Surgical-Medical-Drug-Dental-Vision Program (the Ford Retiree Health Plan). On February 13, 2006, Ford and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW) and a class of retirees entered into a Settlement Agreement in the case of *UAW v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363 (E.D. Mich. July 13, 2006), *aff'd sub nom. UAW v. Gen. Motors Corp.*, 497 F.3d 615 (6th Cir. 2007) (consolidated appeal) (the Hardwick I Settlement Agreement). The

case was brought to contest whether Ford has the right to unilaterally modify hourly retiree welfare benefits for hourly retirees who had been represented by the UAW.

Under the terms of the Hardwick I Settlement Agreement, a new health benefit plan was established to mitigate costs shifted to the affected retirees. The benefits provided under the new plan were to be paid from a voluntary employees' beneficiary association (the Mitigation VEBA) controlled by a committee independent of Ford (the Mitigation VEBA Committee). The Mitigation VEBA was to be funded by Ford through cash and other payments, and by contributions from active Ford employees through wage deferrals and the diversion of cost-of-living adjustments. The Hardwick I Settlement Agreement was to remain in effect until at least September 14, 2011, after which either Ford or the UAW could terminate the agreement and reassert its original position regarding Ford's ability to unilaterally terminate retiree health care benefits.

Despite entering into the Hardwick I Settlement Agreement, Ford's retiree health care funding obligations continued to present a significant impact on the Company's financial condition, which had been exacerbated by recent global economic conditions. In addition, many of Ford's competitors enjoyed a sizeable competitive advantage due to the fact that they lacked the legacy expenses attributable to retiree health benefits. For these reasons, in 2007 Ford announced its intention to terminate retiree health care coverage for UAW represented employees and retirees and its plan to terminate the Hardwick I Settlement Agreement, in 2011. The UAW again contested Ford's unilateral right to alter retiree health benefits, asserting that such benefits were vested and could not be modified without consent. Consequently, throughout October and November 2007, the parties attempted to resolve the impasse through prolonged negotiations.

Ultimately, Ford and the UAW agreed to a permanent restructuring of post-retirement medical benefits and the parties executed a Memorandum of Understanding on November 3, 2007 (the MOU), under which benefits would be funded through a new independent voluntary employees' beneficiary association, the VEBA Trust. The UAW and counsel to the class of plaintiffs (Class Counsel) in *Hardwick I* believed that the retiree health benefits of the classes of plaintiffs would have greater security if funded by the VEBA Trust, because it would be independent of

Ford. According to the Applicant, this belief was based on an extensive study of Ford financial data, provided by Ford, which led to the conclusion that in the event of a Ford bankruptcy, the assets in the VEBA would have greater security.

Under the MOU, the Ford VEBA Plan and the VEBA Trust would assume responsibility for post-retirement medical benefits commencing in 2010. In exchange, Ford would deposit or remit \$13.2 billion in assets (on a present value basis, as of December 31, 2007) to the VEBA Trust. In outlining benefits for retirees and the terms of Ford's payment obligations, the MOU generally followed the pattern set by GM and Chrysler in their bargaining with the UAW.<sup>3</sup>

Despite the parties agreeing to the MOU, on November 9, 2007, the UAW and a class of retirees (the 2007 Class) filed suit against Ford in the United States District Court for the Eastern District of Michigan (the District Court) challenging Ford's unilateral right to alter retiree health benefits and asserting that such benefits were vested. See *Int'l Union, UAW, et al. v. Ford Motor Company*, Civil Action No. 07-14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008).

Following another round of negotiations, Ford and the UAW agreed to a proposed settlement (the 2008 Settlement Agreement). See *Ford Motor Co.*, 2008 WL 4104329. The negotiations included a comprehensive analysis and evaluation of the parties' claims and defenses and of the impact of rising health care costs on Ford's financial condition. The agreement followed a pattern similar to settlement agreements reached between the UAW and GM and Chrysler, respectively.<sup>4</sup>

Pursuant to the Department's request, Ford, the UAW and Class Counsel agreed to amend the proposed form of the trust agreement for the VEBA Trust (the Trust Agreement) to clarify that the Committee, which manages the VEBA Trust and is the administrator and a named fiduciary of the Ford VEBA Plan, would be guided by the principle that the Ford VEBA Plan should provide substantial health benefits for the duration of the lives of all participants and beneficiaries when determining the design of health benefits. After a

<sup>3</sup> Under the terms of the MOU, UAW-represented employees hired after November 19, 2007 were no longer eligible for retiree health benefit coverage under Ford's retiree medical health plan or under the Ford VEBA Plan funded by the VEBA Trust.

<sup>4</sup> See *UAW v. Gen. Motors Corp.*, No. 07-CV-14074-DT, 2008 WL 2968408 (E.D. Mich. July 31, 2008); *UAW v. Chrysler*, No. 07-CV-14310, 2008 WL 2980046 (E.D. Mich. July 31, 2008).

<sup>2</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department.

fairness hearing, the 2008 Settlement Agreement was approved by the District Court on August 29, 2008 as fair, reasonable, and adequate. See *Ford Motor Co.*, 2008 WL 4104329.

The 2008 Settlement Agreement was intended to permanently resolve the parties' disputes and satisfy and replace the prior Hardwick I Settlement Agreement. Under the 2008 Settlement Agreement, based on the framework of the MOU, Ford's obligations for providing post-retirement medical benefits to the 2007 Class and a group of Ford active employees eligible for retiree benefits (the 2007 Covered Group) would be terminated and the Ford VEBA Plan would be established and maintained by the Committee. The Ford VEBA Plan would be funded by the VEBA Trust, which would be responsible for the payment of post-retirement medical benefits to members of the 2007 Class and the 2007 Covered Group. Under the terms of the 2008 Settlement Agreement, coverage and operations for the Ford VEBA Plan would commence on the day following the "Implementation Date," or January 1, 2010. Ford also agreed to transfer assets to the VEBA Trust on behalf of the Ford VEBA Plan with an estimated worth of \$13.2 billion, based on a present value as of December 31, 2007.

As the economic environment continued to deteriorate in late 2008, Ford decided to take further action to remain competitive with other automobile manufacturers and to be able to operate profitably. Ford's principal domestic competitors (GM and Chrysler) were being required, under the terms of government-funded bridge loans, to reduce their public unsecured debt obligations by two-thirds, to reduce by one-half the cash expense associated with their retiree health care VEBA trusts, and to achieve parity in labor costs with the U.S. operations of non-domestic automobile makers. Notably, GM and Chrysler were required to make payments to their employer-specific accounts in the VEBA Trust in at least 50% employer stock. Consequently, Ford and the UAW amended their 2007 collective bargaining agreement to allow Ford to reduce its labor costs. The amendment was ratified by the UAW's membership and became effective on March 16, 2009. On July 23, 2009, Ford, the UAW, and Class Counsel entered into an agreement to amend the 2008 Settlement Agreement (the Amendment Agreement) by providing, *inter alia*, that Ford may use Ford common stock (Ford Common Stock) to pay up to approximately 50% of certain future obligations to the VEBA Trust on behalf of the Ford VEBA Plan. The

Amendment Agreement does not reduce the present value of the assets to be provided to the VEBA Trust under the 2008 Settlement Agreement, but instead altered the form and timing of Ford's obligation to the VEBA Trust in a manner that facilitates efforts to restructure Ford's debt and substantially reduce the risk that Ford will default on its obligations to the VEBA Trust.

The revised settlement agreement (the 2009 Settlement Agreement) took effect on November 9, 2009, upon the District Court's issuance of an "Order and Final Judgment" granting approval to the Amendment Agreement (the Order and Final Judgment), including approval of the amendment to the Trust Agreement (the Trust Agreement Amendment) and certification of the class under the modified class definition.<sup>5</sup> The 2009 Settlement Agreement, *inter alia*, updates the definition of the "Class" under the 2008 Settlement Agreement to include individuals who have retired since the 2008 Settlement Agreement or their spouses and dependents (the Class) and are eligible to receive health care benefits under the Ford VEBA Plan.<sup>6</sup> The 2009 Settlement Agreement also similarly expands the members included in the definition of the 2007 Covered Group (the Covered Group).<sup>7</sup>

#### 4. The Ford VEBA Plan and VEBA Trust

Under the 2009 Settlement Agreement, the UAW Ford Retirees Employees' Beneficiary Association (the Ford EBA), acting through the Committee, will establish and maintain the Ford VEBA Plan, subject to ERISA, for the purpose of providing retiree health benefits to the Class and the Covered Group on and after the day following the Implementation Date, which will be December 31, 2009. Until then, Ford will continue to provide retiree health care benefits to the Class and the Covered Group at the same levels and scope as agreed to in the Hardwick I Settlement Agreement. On the day following the Implementation Date and continuing thereafter, decisions about benefit levels are to be made by the Committee, which will have sole responsibility to determine the scope and level of retiree health benefits available to the Class and the

Covered Group under the Ford VEBA Plan.

The Committee is not obligated to design the Ford VEBA Plan to assure that the assets in the VEBA Trust are sufficient to provide benefits to all potential participants and beneficiaries in the Ford VEBA Plan in all future years. Instead, the Committee's long-term objective in designing the Ford VEBA Plan, absent countervailing circumstances, is to provide "meaningful health benefits" to all participants and beneficiaries in the Ford VEBA Plan.<sup>8</sup>

Acting through the Committee, the VEBA Trust was established on October 16, 2008, by the Ford EBA, along with the UAW Chrysler Retirees Employee's Beneficiary Association and the UAW GM Retirees Employees' Beneficiary Association.<sup>9</sup> The 2009 Settlement Agreement provides that the VEBA Trust will be responsible for the payment of post-retirement medical benefits under the Ford VEBA Plan to members of the Class and the Covered Group the day following the Implementation Date. The VEBA Trust intends to be qualified under section 501(c)(9) of the Code, as amended, and comply as applicable with the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 186, and will be subject to ERISA.

The VEBA Trust is structured to have three separate retiree accounts, designed to segregate payments from each of Ford, GM, and Chrysler, pursuant to the terms of each company's settlement agreement with the UAW and the respective class. The purpose of each separate retiree account is to serve as a segregated, dedicated account to be used for the sole purpose of funding benefits provided under each related new plan and defraying the reasonable expenses of each plan. Each retiree account will also have a separate sub-account maintained to hold any Employer Security<sup>10</sup> and any proceeds from the disposition of any such security. Assets from one separate retiree account may not offset the liabilities or defray the expenses attributable to another separate account. The VEBA Trust was

<sup>8</sup> See Section 10.2(a) of the Trust Agreement.

<sup>9</sup> The VEBA Trust consists of three separate employees' beneficiary associations, each of which has a membership of the applicable Ford, GM, and Chrysler retirees who may become eligible to participate in each separate employee welfare benefit plan established on behalf of the members of each respective eligible group.

<sup>10</sup> The Trust Agreement, as amended, defines an "Employer Security" as any obligation, note, warrant, bond, debenture, stock, or other security within the meaning of section 407(d)(1) of ERISA that is acquired or held by the VEBA Trust (or arising from any such security through conversion).

<sup>5</sup> See *Int'l Union, UAW, et al. v. Ford Motor Company*, Civil Action No. 07-14845, (E.D. Mich. Nov. 9, 2009) (Doc. # 71, Order and Final J.).

<sup>6</sup> The expanded definition of Class can be found on page 3 of the 2009 Settlement Agreement.

<sup>7</sup> The expanded definition of Covered Group can be found on pages 4-5 of the 2009 Settlement Agreement. Notably, this definition includes certain Ford Active Employees who had attained seniority on or prior to November 19, 2007, and who retire on or after August 15, 2009.

structured as a single trust with separate retiree accounts to allow for the pooled investment of assets credited to each of the separate retiree accounts and to provide economies of scale to the Committee in providing services for each of the plans. Unless the Committee decides to establish segregated investment vehicles for specific separate retiree accounts, the assets of the separate retiree accounts, other than any employer security sub-account, will be invested on a pooled basis within the VEBA Trust.

Ford is obligated to make certain payments to the VEBA Trust which will be credited to Ford's separate retiree account under the VEBA Trust (the Ford Separate Retiree Account). The Ford Separate Retiree Account will accept the deposits, contributions, and remittances of, or attributable to, Ford's payments and will pay benefits under the Ford VEBA Plan, as described below. Any Employer Security contributed by Ford to the VEBA Trust will be held in a separate sub-account (the Ford Employer Security Sub-Account).

#### 5. *The Committee of the VEBA Trust*

The Committee acts as the manager, plan administrator and named fiduciary with respect to the Ford VEBA Plan, and it appoints the Trustee, the Independent Fiduciary (as defined herein) and all investment managers of the VEBA Trust's assets. The Committee may also retain independent professional service providers that it deems necessary and appropriate to administer the Ford VEBA Plan.

The Committee is comprised of eleven individuals, consisting of two groups: six Independent Members and five UAW Members. The initial Independent Members were approved by the District Court in the 2008 Settlement and the UAW Members were appointed by the UAW. The Committee will function completely independently of Ford, which has no power of appointment of the Committee's members. No member of the Committee may be a current or former officer, director or employee of Ford, GM, or Chrysler, except that a retiree who was represented by the UAW in his or her employment with either Ford, GM, or Chrysler, or an employee of any such company who is on leave from the company and is represented by the UAW, may be a UAW Member. None of the Independent Members nor any family members, employers or partners of an Independent Member may have any financial or institutional relationship with either Ford, GM, or Chrysler, if such relationship could reasonably be expected to impair such Independent

Member's exercise of independent judgment. Any member of the Committee who is an employee of the UAW or a local union will serve without compensation from the Ford VEBA Plan. Other members of the Committee will be compensated for their services as provided in the Trust Agreement.

The UAW Members serve at the discretion of the UAW and may be removed or replaced, and a successor designated, at any time by written notice by the UAW International President to the Committee. Independent Members serve for a term of three years, except two of the initial Independent Members will have initial terms of two years each, and two other initial Independent Members will have initial terms of one year each. An Independent Member may serve more than one term and will serve on the Committee until his or her death, incapacity to serve, resignation, removal, or expiration of his or her term. An Independent Member may be removed or replaced, and a successor designated, at any time by an affirmative vote of nine of the other members of the Committee. In the event of a vacancy in the group of Independent Members, whether by expiration of a term, resignation, removal, incapacity, or death, a successor Independent Member will be elected by the affirmative vote of nine members. If a successor Independent Member is not appointed within a reasonable time after a vacancy, an arbitrator may be appointed, upon application of any member, to appoint a successor Independent Member to the Committee.

A majority of the members of the Committee then in office shall constitute a quorum for the purpose of transacting any business; provided that at least one Independent Member and one UAW Member are present. Each Member of the Committee present at the meeting shall have one vote. Generally, for any Committee action to take effect, such action must be approved by majority vote of the entire Committee, provided that at least one Independent Member and one UAW Member cast a vote with the majority. In the event of a vacancy in a class of members, the majority of the remaining members of the class may cast the vote of the vacant member. Notwithstanding the foregoing, any change in benefits must receive the affirmative vote of nine or more members.

The Committee will select a chair (the Chair) from among its members. The term of the Chair will continue until he or she ceases to be a member, resigns as Chair or is replaced as Chair with

another member by majority vote among the remaining members.

#### 6. *Ford's Role and Transition Issues*

Ford represents that it will not be a fiduciary with respect to the VEBA Trust or the Ford VEBA Plan, and will have no role in the governance of the VEBA Trust. As noted above, Ford will not have the ability to appoint any member to the Committee, and the Committee is not authorized to act for Ford and is not an agent or representative of Ford for any purpose.

Ford has agreed pursuant to the 2009 Settlement Agreement to cooperate with the UAW and the Committee to undertake reasonable actions as requested to assist the Committee in the transition of responsibility for administration of retiree health benefits by the Committee for the VEBA Trust and the Ford VEBA Plan. Such cooperation may include assisting the Committee in education efforts and communications with respect to members of the Class and the Covered Group so that they understand the terms of the VEBA Trust and the Ford VEBA Plan, the transition of benefit coverage, the claims process, and other administrative changes undertaken by the Committee. At the Committee's request, Ford has also agreed to furnish information to the Committee as reasonably necessary to permit the Committee to effectively administer the VEBA Trust and the Ford VEBA Plan, including data maintained by Ford to the extent permitted by law. Any payments made by Ford for this purpose will not reduce Ford's payment obligations to the VEBA Trust on behalf of the Ford VEBA Plan under the 2009 Settlement Agreement.

If requested by the Committee, and subject to reimbursement for reasonable costs, Ford will continue to perform eligibility determinations for the Ford VEBA Plan for a reasonable period of time, not to exceed 90 days after the Implementation Date, in order to allow the Committee to establish and test an eligibility database. Ford will also assist the Committee in transitioning benefit provider contracts to the Ford VEBA Plan.

To the extent permitted by law, Ford will cooperate with the Committee to allow retiree participants in the Ford VEBA Plan to have required contributions voluntarily withheld on a monthly basis from pension benefits from Ford's pension plan covering members of the Class and the Covered Group (the Ford-UAW Retirement Plan) and to the extent reasonably practical, forwarded to the VEBA Trust to be credited to the Ford Separate Retiree

Account of the VEBA Trust (the Contribution Withholding). A participant may elect or withdraw consent for such pension withholdings at any time by providing 45 days written notice to the Ford-UAW Retirement Plan administrator or such shorter period as may be required by law.

Ford will also cooperate with the Committee to make provision for incorporating the VEBA Trust payment of the "special benefit" of \$76.20 related to Medicare Part B premiums into the monthly Ford pension checks for eligible retirees and surviving spouses participating in the Ford VEBA Plan (the Part B Payment).

The Ford VEBA Plan will be responsible for the payment of reasonable costs associated with Ford's administration of payment of the Contribution Withholding and the Part B Payment. The Applicant asserts that, to the extent that these payments are prohibited transactions, the statutory exemption for the provision of services provided by section 408(b)(2) of ERISA provides relief from the prohibited transaction restrictions of section 406(a) of ERISA.

ERISA section 408(b)(2) provides relief for the "[c]ontracting or making reasonable arrangements with a party in interest for office space, or legal, accounting or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor." Under the Department's regulations, a service is necessary for the establishment or operation of a plan if the service is "appropriate and helpful to the plan obtaining the service in carrying out the purposes for which the plan is established or maintained." 29 CFR 2550.408(b)(2).

According to the Applicant, the Contribution Withholding is helpful to the Ford VEBA Plan as it reduces expenses associated with processing participant contributions and investigating delinquent contributions. This service is also helpful to participants as it assures that contributions are received timely, without the need to mail a check monthly to the Ford VEBA Plan, which thereby will assure continuation of health care coverage under the Ford VEBA Plan for these participants. Accordingly, the Contribution Withholding is appropriate and helpful to the Ford VEBA Plan in carrying out its purpose because it reduces expenses and aids in making sure participants receive benefits without interruption.

With respect to the Part B Payment, the Applicant states that it is appropriate and helpful to the Ford

VEBA Plan as it allows the Ford VEBA Plan to take advantage of an existing administrative process that incorporates a defined, monthly payment to participants into pension checks that participants are already receiving. This obviates the need for the Ford VEBA Plan to develop its own administrative process for this purpose and undertake the expense of mailing monthly checks to all participants. Accordingly, the Part B Payment reduces expenses of the Ford VEBA Plan, which helps conserve the amount of resources available to provide benefits.

Furthermore, the Applicant represents that the costs of the Contribution Withholding and the Part B Payment have not yet been determined. However, the Committee will be subject to ERISA's fiduciary responsibility rules when determining the cost structure, and the 2009 Settlement Agreement states that both services will only be provided to the extent permitted by law, and a cost that is not reasonable would not be permitted by law.

In the Department's view, relief under section 408(b)(2) would be available for these services provided the conditions of that exemption are satisfied. Ultimately, it is the responsibility of the Committee to determine whether the services provided by Ford satisfy all of the conditions set forth in the statutory exemption and pertinent regulations.

#### *7. Payments to the Ford VEBA Plan*

As described in more detail below, on or following the Implementation Date under the 2009 Settlement Agreement, Ford, the Mitigation VEBA Committee, or the trustee of the Mitigation VEBA, as applicable, are required, under the terms of the 2009 Settlement Agreement, to make, on behalf of the Ford VEBA Plan, the following deposits or remittances: (a) Ford shall transfer to the VEBA Trust the balance in the temporary asset account created under the 2008 Settlement Agreement (the TAA) as of the date of transfer or, at Ford's discretion, cash in lieu of some or all of the investments in the TAA; (b) Ford shall transfer to the VEBA Trust two notes issued by Ford (New Note A and New Note B, and collectively, the New Notes) in an aggregate principal amount of \$13.2 billion, warrants to acquire 362,391,305 shares of Ford Common Stock at a strike price of \$9.20 per share (the Warrants), and any shares of Ford Common Stock transferred by Ford in settlement of its first payment obligation under New Note B (Payment Shares); (c) Ford shall direct the trustee of the Existing Internal VEBA (as defined below) to transfer to the VEBA Trust all assets in the Existing Internal

VEBA or cash in an amount equal to the Existing Internal VEBA balance on the date of transfer; and (d) the Mitigation VEBA Committee, or the trustee of the Mitigation VEBA, as directed by the District Court's Order and Final Judgment, is required to transfer all assets and liabilities of the Mitigation VEBA to the VEBA Trust.

#### *8. The TAA and the LLC*

Ford created the TAA under the 2008 Settlement Agreement to serve as tangible evidence of the availability of Ford assets equal to Ford's obligation to the Ford VEBA Plan. The assets in the TAA, and the investment thereof, are controlled exclusively by Ford and include all investment gains/losses thereon from January 1, 2008, through the date the assets are transferred to the VEBA Trust.

In addition, Ford established Ford-UAW Holdings LLC, a wholly-owned LLC, to hold the assets in the TAA and certain other assets required to be contributed under the 2008 Settlement Agreement, namely (a) a convertible note, issued in April 2008 and due January 1, 2013, with an aggregate principal amount of \$3.3 billion bearing 5.75% interest per annum payable semi-annually (the Convertible Note), and (b) a term note, issued in April 2008 and due January 1, 2018 with a principal amount of \$3.0 billion bearing 9.50% interest per annum payable semi-annually (the Term Note).

In late 2008, and under the authority granted to it in the 2008 Settlement Agreement, Ford caused the LLC to pay to it \$2.282 billion, the value of the assets in the TAA as of December 31, 2008, in exchange for a note with a principal amount of \$2.282 billion issued by Ford to the LLC (the TAA Note). The TAA Note has an interest rate of 9% per annum and a maturity date of December 31, 2009. In addition, Ford will repay to the LLC a "true-up amount," calculated according to a formula provided in the note, to reflect a hypothetical investment return on the TAA assets. Since December 31, 2008, Ford has deposited into the TAA \$529.1 million representing interest payments on the Convertible Note and Term Note and payments due under the 2008 Settlement Agreement (Base Amount Payments).<sup>11</sup> Ford is also required under the 2008 Settlement Agreement to transfer, as the Committee may request, up to \$20 million from the TAA to the VEBA Trust to cover expenses that will

<sup>11</sup> Ford is obligated to make annual "Base Amount Payments" of \$52.3 million for 15 years to the VEBA Trust under the 2008 Settlement Agreement.

be incurred by the VEBA Trust in anticipation of the Ford VEBA Plan assuming responsibility for payment of benefits for the Class or Covered Group until the Implementation Date. As of July 31, 2009, the cash balance in the TAA was \$581.2 million.

As soon as practicable after November 30, 2009 (the Exchange Date), the Convertible Note, the Term Note and the TAA Note will be cancelled and returned to Ford in exchange for Ford's issuance of the New Notes and Warrants to the LLC, and Ford's obligation to

make future Base Amount Payments will terminate.

#### 9. New Notes

As described above, under the 2009 Settlement Agreement, the Term Note and Convertible Note, along with the TAA Note and the right to future Base Amount Payments, will be exchanged for the New Notes and Warrants (described in more detail below). The aggregate principal amount of the New Notes and the amortization thereof represents the equivalent value of (a) the principal amounts of and interest

payments on the Term Note, the Convertible Note and the TAA Note; (b) any unpaid Base Amount Payments; and (c) an additional \$25 million per year during the period 2009 through 2018, which is intended to cover transaction costs the Ford VEBA Plan incurs in selling any shares of Ford Common Stock delivered pursuant to Ford's exercise of the stock settlement option under New Note B.<sup>12</sup>

Unless Ford elects to prepay the amounts due under the New Note, the payment schedule under the New Notes will be as set forth below:

Payment date	Payment of note A (million)	Payment of note B (million)
December 31, 2009 .....	\$1,268.47	\$609.95
June 30, 2010 .....	290	609.95
June 30, 2011 .....	290	609.95
June 30, 2012 .....	679	654
June 30, 2013 .....	679	654
June 30, 2014 .....	679	654
June 30, 2015 .....	679	654
June 30, 2016 .....	679	654
June 30, 2017 .....	679	654
June 30, 2018 .....	679	654
June 30, 2019 .....	26	26
June 30, 2020 .....	26	26
June 30, 2021 .....	26	26
June 30, 2022 .....	26	26

#### a. Key Terms of New Note A

New Note A is a \$6,705,470,000 amortizing guaranteed secured note maturing June 30, 2022. It does not bear interest except in the event of a default in a scheduled payment. Payments are to be made in cash, in annual installments from 2009 through 2022. The initial payment of approximately \$1.2 billion, due December 31, 2009, is significantly larger than the subsequent payments, in order to provide the VEBA Trust with funds from which to operate and pay benefits under the Ford VEBA Plan.

New Note A is designated as Primary Second Lien Debt and Second Priority Additional Debt in accordance with, and subject to, the terms of a certain Credit Agreement dated December 15, 2006 with JPMorgan Chase Bank (the 2006 Credit Agreement).<sup>13</sup> As such, up to approximately \$1.5 billion of the principal payments made under New Note A, and any interest from overdue principal payments, are secured on a

second lien basis with the collateral pledged under the 2006 Credit Agreement. Upon satisfaction of certain conditions, this second lien security interest is partially reduced in 2017 and terminated fully in 2018. New Note A is also guaranteed, subject to certain conditions. It will be endorsed with an unconditional guaranty of payment issued by certain direct and indirect wholly-owned Ford subsidiaries (the Subsidiary Guarantors).<sup>14</sup>

New Note A is transferable, subject to limited restrictions. It may not be reoffered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of by the holder except (a) to the VEBA Trust pursuant to the 2009 Settlement Agreement, (b) to Ford or a subsidiary thereof, (c) pursuant to a Ford registration statement that has become effective under the Securities Act of 1933, as amended, (the Securities Act) or (d) pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other

available exemption from the registration requirements of the Securities Act.

However, the VEBA Trust may assign or transfer all or any portion of New Note A provided that (a) the amount of the assignment or transfer must at least be in an initial principal amount of \$250,000,000, or if in excess thereof in an initial principal amount of a multiple of \$100,000,000; (b) the assignment or transfer is not in violation of applicable law; (c) Ford and its Subsidiary Guarantors receive a written agreement from the assignee or transferee to undertake the representations, warranties and covenants of the holder included in the Securities Exchange Agreement; and (d) sufficient notice and evidence of compliance with the transfer or assignment conditions is given to Ford.<sup>15</sup>

#### b. Key Terms of New Note B

New Note B is a \$6,511,850,000 amortizing guaranteed secured note maturing June 30, 2022. It does not bear

<sup>12</sup> Each of New Note A and New Note B represents approximately 50% of Ford's overall funding obligation under the 2008 Settlement Agreement.

<sup>13</sup> It is anticipated that the LLC, as holder of the New Notes (upon their issuance), will enter into an Intercreditor Agreement that will set forth certain priority provisions between the LLC and other second lien lenders.

<sup>14</sup> The Applicant represents that the Ford VEBA Plan will pay no fees to the Subsidiary Guarantors in return for their guaranty of the New Notes. Therefore, the Applicant asserts that although the guarantees are a prohibited extension of credit between the Ford VEBA Plan and parties in interest, such guarantees are covered by the class exemption granting relief for an interest free loan between a plan and a party in interest. PTE 80-26, as amended

(71 FR 17917 (April 7, 2006)) (Interest-Free Loans). In the Department's view, relief under PTE 80-26 would be available for the guarantees provided the conditions of that exemption are satisfied.

<sup>15</sup> See Section 5 of the Securities Exchange Agreement.

interest except in the event of a default in a scheduled payment. The initial principal amount is to be repaid according to the agreed-upon schedule of fourteen annual payments set forth above with an initial payment date on December 31, 2009.

New Note B is also designated as Primary Second Lien Debt and Second Priority Additional Debt in accordance with, and subject to, the terms of the 2006 Credit Agreement. As such, up to approximately \$1.5 billion of the principal payments made under New Note B, and any interest from overdue principal payments, are secured on a second lien basis with the collateral pledged under the 2006 Credit Agreement. Upon the satisfaction of certain conditions, this second lien security interest is partially reduced in 2017 and terminated in its entirety 2018. Additionally, New Note B is guaranteed in accordance with substantially identical terms as are described above for New Note A.<sup>16</sup>

On each New Note B payment date, subject to satisfaction of all of the Stock Settlement Conditions (described below), Ford has the option to settle any or all of the amount due with respect to New Note B with Ford Common Stock designated as "Payment Shares" of equal value, determined based on the volume-weighted average selling price per share of Ford Common Stock for the 30 trading-day period ending on the second business day prior to the relevant payment date. Such Payment Shares will be subject to certain registration rights and transfer restrictions, as described herein.

Ford's option to settle any or all portion of the amounts due with respect to New Note B by delivering Payment Shares is subject in each instance to the satisfaction of the following Stock Settlement Conditions on the applicable payment date:

1. No event of default has occurred under Ford's outstanding public debt securities, bank credit facilities, or notes or other securities issued to the VEBA Trust, and Ford has paid all amounts due on or prior to such payment date on New Note A and New Note B (in cash, or through the exercise of the stock payment option with respect to any payment or portion thereof or the deferral of any payment or portion thereof as described below, as applicable);

2. No bankruptcy or insolvency proceeding has been commenced by or against Ford;

3. Ford has made no assignment for benefit of creditors or admission of general inability to pay debts;

4. Ford Common Stock is listed on the New York Stock Exchange (NYSE) or other

national securities exchange on the payment date, and the NYSE (or such other securities exchange) has not commenced or provided notice of the commencement of any delisting proceedings or inquiries on or prior to the payment date;

5. No judgment in excess of a specified amount has remained unsatisfied and unstayed for more than 30 days;

6. No "termination event" (as defined by ERISA) has occurred with respect to either of Ford's two major U.S. defined benefit pension plans;

7. Ford has received no audit opinion containing a going concern explanatory paragraph for the fiscal year immediately preceding the applicable payment date; and

8. The price per share of Ford Common Stock is greater than \$1.00 (subject to customary anti-dilution adjustments).

Furthermore, if on any payment date under New Note B, conditions 1., 2., 3., 5., and 6. are met, then, subject to certain limitations, Ford would generally have the right to defer such payment by paying it in up to five equal annual installments beginning with the next scheduled payment date, with interest accruing at 9% beginning on the date such payment was originally due and continuing through the date such payment is made. Thus, Ford may make such payment (or installment thereof) in common stock on any deferred installment date if all the conditions for payment in common stock have been met on such date.

#### c. Department's Concerns Regarding New Note B

The Department raised the issue of Ford's discretion under New Note B with Ford, the UAW, and Class Counsel and received the unanimous response that the terms would not unduly disadvantage participants or beneficiaries of the VEBA Trust. The Applicant asserted that, although the Payment Shares will initially be unregistered, the VEBA Trust will likely be able to sell the shares with minimal delay, thus the difference in price between the unregistered Payment Shares and publicly traded Ford Common Stock would be negligible.<sup>17</sup> Furthermore, under the terms of New

<sup>17</sup> Section 5.01 of the Securityholder and Registration Rights Agreement by and among Ford and Ford-UAW Holdings LLC, effective as of November 9, 2009 (the Securityholder and Registration Rights Agreement), obligates Ford to establish a shelf registration as soon as possible following the delivery of the New Notes. Since Ford is a well-known seasoned issuer for purposes of the Securities Exchange Act, the shelf registration should be effective immediately upon filing, allowing the VEBA Trust to sell shares immediately following their receipt. In addition, the VEBA Trust has certain other piggyback registration rights, rights under Rule 144 and 144A, and block sales rights as well, subject to various restrictions designed to protect Ford from dilution of its stock at a time when its stock price is already low.

Note A, the VEBA Trust will receive an additional payment in each year intended to compensate the VEBA Trust for any transaction costs of selling Payment Shares and any short term risk due to stock price volatility.

In addition, the Applicant, the UAW, and Class Counsel maintained that, although Ford would have the unilateral option to defer its payment obligations under New Note B, there would be sufficient conditions present to prevent such option from being abused. Furthermore, according to the UAW and Class Counsel, the terms of the settlement agreement(s) were heavily negotiated by all parties to the transactions, and the formula selected to calculate the amount of Payment Shares payable on a payment date under New Note B provides protection for the VEBA Trust from short-term aberrant trading movements and is a fairly standard method of measuring the value of a stock-settled convertible instrument trading in the marketplace.<sup>18</sup>

The Department takes note of the fact that the 2009 Settlement Agreement was negotiated by the responsible parties, including the UAW and Class Counsel, who believed that it represented the best alternative that could be achieved under difficult circumstances.

#### 10. Other Important Terms Common to the New Notes

Ford may prepay in cash either or both of the New Notes in whole or in part. For prepayments in whole, the payment on each Payment Date shall equal the corresponding amounts set forth as a schedule to the applicable New Note. In the event of any partial prepayment, future payments shall be determined, subject to the VEBA Trust's review and confirmation, on a basis that provides the economically equivalent present value and duration to the VEBA Trust using a discount rate of 9% per annum.

Furthermore, each payment under the New Notes will be deemed a payment of principal. Any payment not made, in addition to any default implications, earns interest at an annual rate of 9% per annum, plus a default premium of 2% per annum from the due date to the date of payment.

#### 11. Warrants

Ford will issue Warrants to acquire 362,391,305 shares of Ford Common Stock at a strike price of \$9.20 per share. The Warrants expire on January 1, 2013.

<sup>18</sup> See pages 1–2 of "UAW Response to Department of Labor Questions on New Note B: Statement in Support of Prohibited Transaction Exemption Application of Ford Motor Company," submitted July 24, 2009.

<sup>16</sup> See Footnote 14 regarding the applicability of PTE 80–26.



The exercise price and terms of the Warrants are similar to the conversion price and the conversion rights in the Convertible Note provided under the 2008 Settlement Agreement, and are intended to preserve to the Ford VEBA Plan the option value embedded in the Convertible Note by allowing the Ford VEBA Plan to benefit from any appreciation of Ford's common stock above the exercise price to the same extent it would have under the Convertible Note. The exercise price of the Warrants is subject to adjustment according to the terms of the Warrant Agreement, including as the result of share split, share combination, certain dividends or distributions and certain tender offers.

The Warrants are subject to a restriction on transfer, in that they may not be reoffered, sold, assigned, transferred, pledged, encumbered, or otherwise disposed of by a Warrantholder except (a) in compliance with applicable transfer restrictions, if any, set forth in Section 2.2 of the Securityholder and Registration Rights Agreement, and (b)(i) to Ford or a subsidiary thereof, (ii) pursuant to a Ford registration statement that has become effective under the Securities Act, or (iii) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act.

Shares of Ford Common Stock received by the Ford VEBA Plan upon exercise of all or a portion of the Warrants are also subject to restrictions on resale under the Securityholder and Registration Rights Agreement as described further below. In addition, the shares may not be reoffered, sold, assigned, transferred, pledged, encumbered, or otherwise disposed of except (a) prior to October 1, 2012 if the closing sale price of the common stock was greater than 120% of the then current exercise price for at least 20 trading days in the 30 consecutive trading days ending on the last trading day of the preceding calendar quarter or (b)(i) to Ford or its subsidiary, (ii) pursuant to a Ford registration statement that has become effective under the Securities Act, or (iii) pursuant to an exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act. Any shares of common stock as to which the transfer restrictions have expired may be freely sold without limits.

In addition, Warrantholders will not be entitled by virtue of holding Warrants to vote, consent, receive dividends, or exercise any right whatsoever of a Ford stockholder unless

such Warrantholders become holders of record of the underlying shares of Ford common stock.

#### *12. Rights and Restrictions Under the Securityholder and Registration Rights Agreement*

Under the 2009 Settlement Agreement, the Payment Shares, Warrants, and Ford Common Stock issued as a result of the exercise of Warrants, as well as any Ford Common Stock sold in connection with any hedging transaction undertaken by the Ford VEBA Plan, have certain registration rights and are subject to customary limitations and restrictions on transfer, that are described below.

##### *a. Registration Rights*

Under the Securityholder and Registration Rights Agreement, the VEBA Trust is limited to two shelf takedown or demand registrations per year, and certain piggyback registration rights, including limitations on the aggregate sale of shares per quarter and year of 250 million shares and 500 million shares respectively. Additionally, the VEBA Trust is subject to certain restrictions with respect to Rule 144 and 144A sales and block sales of Ford Common Stock, that are designed to minimize dilution or disruption to the voting power, of Ford Common Stock.

##### *b. Indemnification Rights and Obligations*

In addition, under the Securityholder and Registration Rights Agreement, the VEBA Trust, on behalf of the Ford VEBA Plan, and Ford may be required to indemnify the other party for certain losses related to an offering of any shares of Ford Common Stock that are issued or issuable, as the case may be, upon settlement of New Note B or exercise of the Warrants (Registrable Instruments). In general, Ford has agreed to indemnify the VEBA Trust, on behalf of the Ford VEBA Plan, to the extent it is a holder of any such Securities for all losses arising out of or caused by any untrue statement or alleged untrue statement of a material fact contained in any registration statement or offering document, subject to the terms and conditions of the agreement. Similarly, the VEBA Trust, on behalf of the Ford VEBA Plan, as a holder of the Securities, has agreed to indemnify and hold Ford harmless for any losses arising out of or caused by an untrue statement or omission included or omitted in any registration statement or offering document based on information furnished in writing by the VEBA Trust.

The VEBA Trust, on behalf of the Ford VEBA Plan, may also be subject to a repayment obligation under the Securityholder and Registration Rights Agreement in the event that the Independent Fiduciary determines to withdraw any Registrable Instruments from any "Shelf Offering" or "Demand Offering" after having delivered notice to Ford of its intent to effect an offering of all or part of the Registrable Instruments. Among other requirements, the VEBA Trust must reimburse Ford for all reasonable out-of-pocket fees and expenses incurred in the preparation, filing and processing of the withdrawn registration in order for the withdrawn request not to be deemed an offering and counted against the offering limits provided in such agreement.

The Applicant has requested exemptive relief from section 406(a)(1)(D) of ERISA for these indemnification and reimbursement obligations to the extent that the Ford VEBA Plan is a holder of the relevant Securities and the payment obligations are triggered. Alternatively, the Applicant asserts that Ford's performance of its contractual obligations under the Securityholder and Registration Rights Agreement may be a "service" rendered to the VEBA Trust, and that the reimbursement of certain costs is "reasonable compensation" for such service, such that the statutory exemption of section 408(b)(2) of ERISA applies to exempt any such reimbursement from the prohibitions under section 406(a)(1) of ERISA, and the performance of such service from the prohibitions under section 406(a)(1)(C) of ERISA.

The Department is not proposing any relief in connection with the Ford VEBA Plan's obligation to (a) indemnify and hold Ford harmless for losses arising out of or caused by an untrue statement or omission in any registration statement or offering document based on information furnished in writing by the VEBA Trust, or (b) reimburse Ford in the event that the Independent Fiduciary determines to withdraw any Registrable Instruments from a "Shelf Offering" or "Demand Offering" after having delivered notice to Ford of its intent to effect such an offering.

It appears to the Department that the only representation that the VEBA Trust could make to Ford for purposes of a registration statement or offering document is that it holds the Registrable Instruments free and clear from any liens.<sup>19</sup> Thus, it seems unlikely that the

<sup>19</sup>In discussions with the Department, the Applicant was hard-pressed to point out any factual



Ford VEBA Plan will have to indemnify Ford pursuant to this obligation. ERISA section 408(b)(2) may provide relief for reasonable amounts paid to Ford if the Independent Fiduciary withdraws any Registrable Instruments from an offering after it has announced its intentions to effect such offering and Ford has incurred costs as a result of the Independent Fiduciary's decision. Ultimately it would be the responsibility of the Committee to determine whether the services provided by Ford satisfy all of the conditions set forth in the statutory exemption and pertinent regulations.

#### c. Right of Ford To Purchase Securities

Ford also retains the right, under the Securityholder and Registration Rights Agreement, to make an offer to purchase certain Securities that the VEBA Trust intends to transfer to third parties. If at any time the Independent Fiduciary proposes to transfer any Warrants, Payment Shares or shares of Ford Common Stock received upon the exercise of all or a portion of the Warrants, subject to certain exceptions, Ford will have an option for ten days, after receiving notice of such intended sale, to offer to purchase all or any portion of the Securities proposed to be transferred (the "Right of First Offer"). After receiving Ford's offer, the VEBA Trust will have ten days to accept the offer. If the VEBA Trust does not accept Ford's offer, it may transfer such Securities, subject to the other terms of the Securityholder and Registration Rights Agreement, to a purchaser on terms and conditions that are not less favorable to the VEBA Trust (and no more favorable to the purchaser) than those outlined in Ford's offer, provided that the transfer is completed within one hundred twenty (120) days after notice was provided to Ford.

#### d. Hedging

The Applicant represents that hedging is generally permitted only on Payment Shares received by the VEBA Trust prior to such hedging and with respect to no more than 25% of the Payment Shares deliverable by Ford on the next succeeding payment date, subject to satisfaction of the Stock Settlement Conditions, in a manner consistent with the then-existing registration rights agreement and sales and time limitations.

situations that would trigger the VEBA Trust's indemnification and reimbursement obligations to Ford.

#### 13. Existing Internal VEBA

The Existing Internal VEBA is the subaccount of the Ford-UAW Benefits Trust that is maintained by Ford as a source of funding for retiree health care expenses. As of December 31, 2008, the Existing Internal VEBA had an estimated asset value of approximately \$2.7 billion.

Until the Existing Internal VEBA is transferred to the VEBA Trust, the assets will continue to be invested in a manner consistent with its investment policy, as may be amended from time to time. Within 10 business days after the Implementation Date, Ford will direct the trustee of the Existing Internal VEBA to transfer to the VEBA Trust all assets in the Existing Internal VEBA or cash in an amount equal to the Existing Internal VEBA balance on the date of the transfer. As described further below, the Existing Internal VEBA will retain an amount equal to the Existing Internal VEBA's share of expenses (to the extent permitted by ERISA) subject to reconciliation with actual expenses incurred.

#### 14. Mitigation VEBA

The Mitigation VEBA was created in connection with the 2008 Settlement Agreement. Ford submitted an initial application for an individual prohibited transaction exemption relating to the Mitigation VEBA on November 27, 2007.<sup>20</sup> The Mitigation VEBA is intended to be a source of "mitigation" payments to Ford UAW retirees to lessen the impact of the new cost-sharing provisions implemented under the 2008 Settlement Agreement. As of December 31, 2008, the Mitigation VEBA had an estimated asset value of \$54.4 million. Until the assets and liabilities of the Mitigation VEBA are transferred to the VEBA Trust for the benefit of the Ford VEBA Plan, its value will be affected by certain additional contributions, investment returns and mitigation expenses and payments. The balance of the Mitigation VEBA is to be transferred to the VEBA Trust within 15 days after the Implementation Date. After transfer of the assets, the Mitigation VEBA will be terminated.

#### 15. Covered Transactions

Generally, the Applicant seeks exemptive relief for three sets of transactions. The first set of transactions involves the acquisition, holding, and disposition of the employer securities

<sup>20</sup> The Mitigation VEBA is the subject of Prohibited Transaction Exemption 2009-28, 74 FR 49038 (September 25, 2009), which provided relief for certain cash advances and "true ups" between Ford and the Mitigation VEBA related to administration of such VEBA.

described above by the Ford VEBA Plan. The second set relates to the exercise by Ford or the Ford VEBA Plan of certain rights and obligations pursuant to the Securityholder and Registration Rights Agreement. Finally, the third set of transactions involves those transactions between Ford and the Ford VEBA Plan that may occur as a result of the transition of responsibility to provide benefits from Ford to the Ford VEBA Plan under the 2009 Settlement Agreement, such as possible extensions of credit, reimbursement of expenses, or the mistaken deposits of assets into the Ford VEBA Plan.

With respect to the three sets of transactions described above, the Applicant states that the transactions provide the only feasible method of funding health care benefits for retirees and their beneficiaries while preserving the financial health of Ford. The UAW and Class Counsel have joined in supporting this request for exemptive relief described fully herein.

#### a. Acquisition, Holding, and Disposition of Ford Securities

(1) LLC Interests, New Note A, New Note B and the Warrants

The Applicant requests exemptive relief from sections 406(a)(1)(E), 406(a)(2), and 407(a) of ERISA for the acquisition and holding by the Ford VEBA Plan of the LLC Interests. Additionally, because New Note A, New Note B and the Warrants will be held by the LLC at the time the LLC Interests are transferred, the Applicant also requests relief for the indirect acquisition and holding of the New Notes and Warrants by the Ford VEBA Plan. Alternatively, if Ford determines not to transfer the LLC Interests to the VEBA Trust and instead elects to transfer the New Notes and the Warrants directly, the Applicant requests relief from sections 406(a)(1)(E), 406(a)(2), and 407(a) for the direct acquisition and holding of such Securities by the Ford VEBA Plan.

Section 406(a)(1)(E) prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes the direct or indirect acquisition, on behalf of a plan, of any employer security in violation of section 407(a). Section 406(a)(2) prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan from permitting the plan to hold any employer security if he knows or should know that holding such security violates section 407(a).

Section 407(a)(1) states that a plan may not acquire or hold any "employer security" that is not a "qualifying

employer security.” Section 407(a)(2) states that a plan may not acquire any qualifying employer security (or “qualifying employer real property”) if immediately after such acquisition the aggregate fair market value of employer securities (and “employer real property”) held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

Section 407(d)(5) of ERISA defines a “qualifying employer security” as an employer security that is either (i) stock, (ii) a marketable obligation (as defined by section 407(e) of ERISA), or (iii) an interest in certain publicly traded partnerships. Furthermore, a “marketable obligation” is defined, in part, under section 407(e) of ERISA as a “bond, debenture, note, or certificate, or other evidence of indebtedness” if immediately following the acquisition of such obligation, not more than 25% of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan; and at least 50% of the aggregate amount of such obligations in such issue is held by persons independent of the issuer. Lastly, section 407(e) of ERISA requires that immediately following the acquisition of the obligation by the plan, not more than 25% of the assets of the plan are invested in obligations of the employer or an affiliate of the employer.

According to the Applicant, each of the LLC Interests, the New Notes and the Warrants represent a “security” under section 3(20) of ERISA. The Applicant contends that, at the time of the VEBA Trust’s acquisition of the LLC Interests, the LLC Interests will be “employer securities” under section 407(d)(1) of ERISA because immediately prior to the transfer, the LLC is a wholly-owned subsidiary and an affiliate of Ford.<sup>21</sup> However, after the acquisition has been completed, the LLC will cease being an affiliate of Ford, and the LLC Interests will no longer be “employer securities” with respect to the VEBA Trust.<sup>22</sup> Further, the

Applicant notes that the LLC Interests cannot be “qualifying employer securities” at the time they are transferred, because they do not constitute stock, marketable obligations, or interests in a publicly traded partnership, for purposes of section 407(d)(5) of ERISA.

In addition, the New Notes will not be “qualifying employer securities” as defined under ERISA section 407(d)(5) at the time of their direct or indirect acquisition by the VEBA Trust, because neither New Note is a marketable obligation. In this regard, upon the direct or indirect transfer to the VEBA Trust, it is expected that the VEBA Trust will hold 100% of each New Note issued and outstanding in violation of section 407(a). Thus, neither of the New Notes will constitute a “qualifying employer security” at the time they are acquired by the VEBA Trust.

Moreover, noting the Department’s position in Advisory Opinion Letter 94–31A, the Applicant contends that the Warrants are not qualifying employer securities, because they are neither stock nor marketable obligations under section 407(d)(5) of ERISA.<sup>23</sup>

Moreover, the Applicants note that even if the LLC Interests, the Warrants, and the New Notes are considered qualifying employer securities, the aggregate fair market value of employer securities held by the Ford VEBA Plan will exceed the 10 percent limitation in section 407(a)(2) of ERISA.

Furthermore, the Department is proposing exemptive relief from section 406(a)(1)(A), 406(b)(1), and 406(b)(2) in the event that the Securities, including the LLC Interests, are disposed of in a transaction with a party in interest.

## (2) Ford Common Stock

The Applicant requests relief from the provisions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of ERISA for the Ford VEBA Plan’s acquisition or holding of Payment Shares or any Ford Common Stock acquired pursuant to the exercise of all or a portion of the Warrants, as the aggregate fair market value of qualifying employer securities held by the VEBA Trust may exceed the 10 percent limitation in section 407(a)(2) of ERISA (as described above), resulting in a violation of sections 406(a)(1)(E) and 406(a)(2) of ERISA.

The Applicant asserts that, depending on numerous factors at the time of receipt of Payment Shares or upon the

exercise of all or any portion of the Warrants, such as the price of the Ford Common Stock, the investment performance of the Ford VEBA Plan’s assets, and the number of claims filed under the Ford VEBA Plan, Ford employer securities held by the VEBA Trust may exceed 10 percent of the fair market value of the assets of the Ford VEBA Plan.

In addition, the Applicant is concerned that Ford Common Stock may cease to be “qualifying employer securities” as defined under ERISA section 407(d)(5) at one or more times over the life of Note B, because such stock may exceed the limitation described in section 407(f)(1) of ERISA. Section 407(f)(1) of ERISA provides that an employer security constitutes a qualifying employer security only if “(A) no more than 25% of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50% of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.” According to the Applicant, the VEBA Trust, through a combination of holdings of Ford Common Stock, Ford’s payment of Ford Common Stock in satisfaction of its obligations under New Note B, and the exercise of the Warrants, may hold more than 25% of the outstanding common shares of Ford. If so, Ford Common Stock held by the VEBA Trust would no longer satisfy the requirements of section 407(f)(1). The Applicant therefore seeks exemptive relief for the VEBA Trust’s acquisition and holding of Ford Common Stock acquired through the receipt of Payment Shares or upon the exercise of all or a portion of the Warrants, to the extent such shares cease to be qualifying employer securities at one or more times over the life of New Note B.

The Applicant also expressed concern that the Department may take the view that the Payment Shares and shares received upon exercise of the Warrants constitute a separate class of stock due to the transfer restrictions applicable to them. As a result, Ford requests relief from section 407(a) of ERISA for each tranche of stock in the transaction.

Furthermore, the Department is proposing relief from section 406(a)(1)(A), 406(b)(1), and 406(b)(2) of ERISA in the event that the Ford Common Stock is disposed of in a transaction with a party in interest.

## (3) Extensions of Credit

The Applicant seeks relief from sections 406(a)(1)(B) and 406(b)(1) for the Ford VEBA Plan’s direct or indirect acquisition of the New Notes, and with

<sup>21</sup> Section 407(d)(7) defines the term “affiliate” for purposes of identifying employer securities. It provides, in part, that:

“[A] corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1986, except that ‘applicable percentage’ shall be substituted for ‘80 percent’ whenever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term ‘applicable percentage’ means 50 percent. \* \* \*

<sup>22</sup> See DOL Opinion Letter 2003–14A (October 8, 2003) (securities ceased being “employer securities” immediately following the completion of an exchange of securities in which affiliate status of the issuing company was terminated).

<sup>23</sup> See DOL Advisory Opinion Letter 94–31A n.4 (September 9, 1994) (“In the Department’s view, warrants to purchase employer securities generally would not constitute ‘qualifying employer securities’ under section 407(d)(5) of ERISA since they are neither stock nor marketable obligations.”).

respect to Ford's deferral option under New Note B. Section 406(a)(1)(B) prohibits a fiduciary from causing a plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect lending of money or other extension of credit between a plan and a party in interest.

The New Notes constitute an extension of credit between the Ford VEBA Plan and Ford, a party in interest. In addition, if Ford has satisfied certain of the conditions necessary for the settlement of New Note B in Payment Shares (see Key Terms of New Note B, *supra.*), then Ford may also have the right under New Note B to defer such payment and instead pay it over five years, with 9% interest. If Ford is in compliance with all of the settlement conditions, Ford may have the right to pay such deferred payment in Payment Shares, and if Ford has only satisfied certain of the settlement conditions, Ford must contribute cash. Because the deferred contribution can be paid in five equal annual installments, the deferral of a payment is tantamount to an extension of credit from the Ford VEBA Plan to Ford in the amount of the deferred payment.

#### (4) Ford's Deposits and Remittances

The Applicant also seeks relief for Ford's deposits to the Ford VEBA Plan, and for the sale of Ford Common Stock to the Ford VEBA Plan pursuant to the Independent Fiduciary's exercise of the Warrants, in the event that any such contribution is deemed to be a "sale or exchange" of property between a plan and a party in interest in violation of section 406(a)(1)(A) of ERISA. The Applicant believes that Ford's contribution to the Ford VEBA Plan of the Securities could be deemed to reduce an obligation that Ford would otherwise have to the participants and beneficiaries of the Ford VEBA Plan.<sup>24</sup> In addition, because the Independent Fiduciary's exercise of the Warrants on behalf of the Ford VEBA Plan would take the form of a "sale" of property (i.e., Ford Common Stock) to a plan from a party in interest in violation of

section 406(a)(1)(A), the Applicant seeks relief for this transaction.

#### b. Exercise of Certain Rights and Obligations Pursuant to the Securityholder and Registration Rights Agreement

##### (1) Right of First Offer or Self Tender

The Applicant seeks relief from section 406(a)(1)(A) for the purchase of certain Securities pursuant to Ford's "Right of First Offer" under the Securityholder and Registration Rights Agreement. Under the agreement, Ford may purchase certain Securities, including Payment Shares or Warrants, that the VEBA Trust intends to transfer to third parties in accordance with the Right of First Offer or a Ford self-tender. Section 406(a)(1)(A) of ERISA prohibits a fiduciary from causing a plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between the plan and a party in interest, except as provided in section 408 of ERISA.

Section 408(e) of ERISA provides, in part, that the prohibitions of sections 406 and 407 shall not apply to the sale by a plan of "qualifying employer securities" if such sale is (A) for adequate consideration and (B) no commission is charged with respect thereto.

The Applicant states that section 408(e) of ERISA may be inapplicable to the sale of Ford Common Stock by the VEBA Trust to Ford pursuant to its Right of First Offer, because, as described above, the shares of Ford Common Stock to be sold to Ford may be deemed not to constitute "qualifying employer securities" at the time of such sale by the VEBA Trust. In addition, the Applicant notes that section 408(e) of ERISA will not provide relief from the prohibitions under section 406 of ERISA for the sale of Warrants pursuant to Ford's Right of First Offer, because the Applicant does not believe the Warrants constitute "qualifying employer securities."

#### c. Transition Payments and Mistaken Deposits

##### (1) Mispayment of Benefits and Reimbursements

Prior to the Implementation Date, Ford and the Existing Internal VEBA will bear responsibility for the payment of benefits under the Ford Retiree Health Plan to members of the Covered Class and the Covered Group who ultimately will be covered by the Ford VEBA Plan. The Ford VEBA Plan will have sole responsibility and be the

exclusive source of funds for the payment of retiree medical benefits to the Class and Covered Group, with respect to benefit claims incurred after the Implementation Date.

Under certain circumstances related to the transition, Ford, the Ford Retiree Health Plan, and the Ford VEBA Plan may extend credit or transfer plan assets to each other in order to pay benefit claims that are the legal responsibility of one of the other aforementioned parties (such other party, the Responsible Party). The Applicant asserts that mispayments and reimbursements are likely to occur in the normal course of operation due to the administrative realities of health care payments and the shifting of plan responsibilities between multiple plans in a short period of time.

The following is an example of a transaction that would require relief under the requested exemption. A member of the Covered Group receives medical care on December 28, 2009, thereby incurring a claim under the Ford Retiree Health Plan. However, in April of 2010, the claim is presented to and paid by the Ford VEBA Plan. The Ford VEBA Plan would be reimbursed by the Ford Retiree Health Plan.

In such event, the Responsible Party will reimburse the payor for such benefits, plus interest. The Applicant contends that payment by an entity of benefits for claims incurred after benefit responsibility has been transferred to the Responsible Party constitutes an extension of credit between such entity and the Responsible Party that is prohibited under section 406(a)(1)(B). Payment by the Responsible Party to such entity as reimbursement for these paid claims constitutes a transfer of plan assets to a party in interest that is prohibited under 406(a)(1)(D).

##### (2) True-Ups for TAA Expense Accruals

The Applicant seeks relief from sections 406(a)(1)(B) and 406(a)(1)(D) for the payment arrangement established under Section 12.D of the 2009 Settlement Agreement relating to the accrual and subsequent true-up of expenses associated with the TAA through the date of transfer of the TAA assets. The 2009 Settlement Agreement provides that the TAA or Ford, as applicable, will accrue and retain an amount representing pre-transfer TAA expenses. After payment of the actual expenses, the accrual and actual expenses will be reconciled. If there has been an underaccrual, the VEBA Trust is obligated to return the amount of the underaccrual to the TAA or Ford, as applicable. If there has been an overaccrual, the TAA or Ford, as applicable, will transfer the amount of

<sup>24</sup> In *Commissioner v. Keystone Consolidated Industries*, 508 US 152 (1993), the Supreme Court held that an employer's contribution of property in satisfaction of the plan's funding obligation was a "sale or exchange" for purposes of 4975(c)(1)(A) of the Code, 26 USC 4975(c)(1)(A). Moreover, the Department has held that an in-kind contribution to a plan constitutes a prohibited transaction if the contribution reduces an obligation of a plan sponsor or employer to make a cash contribution to the plan. See Interpretive Bulletin 94-3, 29 CFR 2509.94-3(c).

the overaccrual to the VEBA Trust. Since the TAA is currently held by the LLC and it is anticipated that Ford will transfer its entire interest in the LLC to the VEBA Trust on the Implementation Date, it is expected that any overaccrual or underaccrual of pre-transfer expenses relating to the TAA will be paid to and from Ford.

Since Ford is a party in interest to the Ford VEBA Plan, the transfer of an amount of assets of the Ford VEBA Plan from the VEBA Trust to Ford for any underaccrual constitutes the use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(D) of ERISA. Similarly, Ford's overaccrual and retention of cash after the Implementation Date constitutes the use of plan assets by or for the benefit of a party in interest. Moreover, the overaccrual or underaccrual and subsequent reimbursement payment between Ford and the VEBA Trust constitutes a prohibited extension of credit between the plan and a party in interest in violation of section 406(a)(1)(B) of ERISA.

Similarly, Section 12.B of the 2009 Settlement Agreement provides that within 10 business days after the Implementation Date, Ford will direct the trustee of the Existing Internal VEBA to transfer to the VEBA Trust all assets in the Existing Internal VEBA or cash in an amount equal to the Existing Internal VEBA balance on the date of the transfer. The agreement provides that an amount for trust expenses (to the extent permitted by ERISA) through the date of transfer will be accrued and retained within the Existing Internal VEBA to pay the expenses. Subsequently, a reconciliation of the accruals and the actual expenses will be performed. Any overaccrual of expenses will be paid to the VEBA Trust on behalf of the Ford VEBA Plan. The VEBA Trust will return any underaccrual to the Existing Internal VEBA.

### (3) Mistaken Payments or Deposits

The Applicant likewise seeks relief from section 406(a)(1)(D) of ERISA for return of mistaken payments to the Ford VEBA Plan, with interest.

Under the last paragraph of Section 12 of the 2009 Settlement Agreement, any deposit made to the Ford VEBA Plan by mistake will be returned (with earnings) within 30 days of notice to the Committee of the mistake, to the extent permitted by law. The Applicant is concerned that this could be viewed as involving a prohibited transfer of plan assets to a party in interest. Accordingly, the Applicant requests exemptive relief for this transaction.

### 16. Conditions Related to the Transfer of Ford Securities to the Ford VEBA Plan: The Independent Fiduciary

Pursuant to the Trust Agreement, the Committee will appoint an independent fiduciary to manage the Ford Employer Security Sub-Account (the Independent Fiduciary). The Independent Fiduciary will be a "named fiduciary" and "investment manager" as both terms are defined in ERISA, with complete discretion regarding the holding, ongoing management, and disposition of any Ford security (*i.e.*, the Ford Common Stock, New Notes, Warrants, Payment Shares, and LLC Interests) acquired and held by the Ford VEBA Plan.

The Independent Fiduciary does not have discretion with respect to certain other aspects of the Securities. First, because the Ford VEBA Plan will acquire the Securities by virtue of the 2009 Settlement Agreement, the Independent Fiduciary has no discretion regarding the acquisition of the Securities. Additionally, under the Securityholder and Registration Rights Agreement, the Ford Common Stock held by the VEBA Trust must be voted in the same proportion as votes cast by other stockholders generally, and must always be voted in favor of any amendments to Ford's governing documents proposed in order to facilitate the transactions contemplated by the Securityholder and Registration Rights Agreement. Therefore, the Independent Fiduciary will have no responsibility for the voting of the Ford Common Stock.

The Independent Fiduciary must be independent of and unrelated to Ford, the UAW and the Committee.<sup>25</sup> However, the fiduciary will be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Ford, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Ford, the UAW or any Committee member in his or her individual capacity in connection with any transaction described in this exemption (except that an Independent Fiduciary may receive compensation from the Committee or the Ford VEBA

Plan for services provided to the Ford VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision), or (3) the annual gross revenue received by the fiduciary, in any fiscal year of its engagement, from any of: Ford, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.<sup>26</sup>

The Independent Fiduciary may be removed by the Committee on 30 days written notice only for cause.<sup>27</sup> The

<sup>26</sup> The Department notes that the preceding conditions are not exclusive, and that other circumstances may develop which cause the Independent Fiduciary to be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates.

<sup>27</sup> Cause is defined in the Independent Fiduciary Agreement as: (i) Any disqualifying event described in ERISA section 411; (ii) determination by any court, arbitrator or government regulatory body that the Independent Fiduciary has violated any civil or criminal law (including, but not limited to, securities, antitrust or ERISA) in connection with the performance of its responsibilities to the VEBA Trust (for purposes of avoidance of doubt in connection with this and the subsequent subparagraph, a "determination" shall mean any written judgment, order or decree; court-approved settlement; arbitration award; or enforcement action of a government regulatory body or SRO, in the form of a written sanction, claim, demand or opinion, whether or not appealable); (iii) determination by any court, arbitrator or government regulatory body that the Independent Fiduciary has materially breached the terms of its engagement, whether or not appealable; (iv) any action by the Independent Fiduciary that results in imposition of a civil or criminal sanction, any prohibited transaction excise tax, or any civil judgment or award of damages, on the VEBA Trust, the Committee, the trustee, or their respective employees, officers directors or owners (whether or not subject to indemnity by the Independent Fiduciary, an insurer, or any other person); (v) termination, resignation, or death of the Independent Fiduciary principal or officer assigned to serve as the relationship principal with respect to the VEBA Trust, or the inability of such person to perform his or her duties for a continuous period of more than 30 days; (vi) any change of ownership of the Independent Fiduciary that constitutes an "assignment" of the Independent Fiduciary's contract with the VEBA Trust, within the meaning of the Investment Advisers Act; (vii) failure of the Independent Fiduciary to qualify as an "investment manager" within the meaning of ERISA section 3(38); (viii) any change in the clientele, business or ownership of the Independent Fiduciary that results in an actual conflict of interest; (ix) failure of the Independent Fiduciary to take into account the legitimate needs of the VEBA Trust for liquidity to pay benefits; (x) violation of any conditions imposed on the Independent Fiduciary under the terms of the prohibited transaction exemption issued by the Department; (xi) any other action or inaction of the Independent Fiduciary that the Committee determines to be a material breach of the Independent Fiduciary's agreement or any law, or is likely to result in an irreconcilable conflict; or

Continued

<sup>25</sup> The Department notes that candidates for the position of Independent Fiduciary to the Ford VEBA Plan may be affiliated with entities that provide services to Ford, GM, Chrysler, or their affiliates. It is the responsibility of the Committee to determine whether such affiliations are likely to affect the judgment of the candidate in performing its services as an Independent Fiduciary.

removal will be effective as specified in the written notice, provided that the Independent Fiduciary has been given notice of the appointment of a successor Independent Fiduciary. No successor will be appointed in the event the Ford VEBA Plan ceases to hold any employer security. In the event that the Ford VEBA Plan subsequently acquires or holds an employer security and no appointment of a successor Independent Fiduciary has been made, any court of competent jurisdiction may, upon application by the retiring Independent Fiduciary, appoint a successor after such notice to the Committee and the retiring Independent Fiduciary.

The Committee delegated to a subcommittee (*i.e.*, three Committee members) the responsibility to retain an Independent Fiduciary on behalf of the Ford VEBA Plan. The subcommittee initially determined to proceed with the assumption that the interests of each plan whose assets are held by the VEBA Trust would be best served by seeking to retain a single qualified Independent Fiduciary to represent all three plans (providing health benefits, respectively, to retirees of Chrysler, GM, and Ford). However, the subcommittee recognizes the possibility that engaging multiple Independent Fiduciaries may turn out to be the better option.

The subcommittee intends, as part of the interview process for potential candidates for the Independent Fiduciary appointment, to question the candidates on the nature and likelihood of potential conflicts of interest, the appropriate means of monitoring and communicating actual or potential conflicts, including whether the candidates currently have formal conflict monitoring procedures, and mechanisms for dealing with actual or potential conflicts as they are identified. After reviewing the candidates' qualifications, capacity to represent all three plans, willingness to do so, and other relevant factors, in consultation with counsel, the subcommittee anticipates making a final determination as to whether to hire one Independent Fiduciary or multiple Independent Fiduciaries.

The subcommittee will work with the Independent Fiduciary candidate(s) to develop procedures to identify, minimize and address conflicts of interest as they arise. Specifically, in the event that a single Independent

Fiduciary is appointed, the subcommittee will engage a "conflicts monitor" to (a) develop a process for identifying potential conflicts, (b) to regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict, and (c) further question the Independent Fiduciary when appropriate.

Additionally, the subcommittee will be prepared to replace the Independent Fiduciary in the event of an actual and irreconcilable conflict of interest.

Finally, the subcommittee will require the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy will require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflict.

A separate investment bank will be retained with respect to each of the three plans comprising the VEBA Trust. The investment bank's initial recommendations will be made solely with the goal of maximizing the returns for the single plan that owns the securities for which the investment bank is responsible. If the Independent Fiduciary deviates from such initial recommendations, it would find it necessary to explain why it deviated from a recommendation, and such a deviation may provide a basis for the Committee or its designee to flag possible conflicts of interest in advance. Any contract between the Independent Fiduciary and an investment banker will include an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

The Independent Fiduciary will comply with the following additional conditions. The Independent Fiduciary will authorize the Trustee of the Ford VEBA Plan to dispose of Ford Common Stock (including any Payment Shares or shares of Ford Common Stock acquired pursuant to exercise of the Warrants), the New Notes, or exercise the Warrants, only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the Ford VEBA Plan, and protective of the participants and beneficiaries of the Ford VEBA Plan.

The Independent Fiduciary will negotiate and approve on behalf of the Ford VEBA Plan any transactions between the Ford VEBA Plan and any

party in interest involving the Securities that may be necessary in connection with the subject transactions (including but not limited to the registration of Payment Shares, Ford Common Stock received upon exercise of the Warrants, or any Securities contributed to the Ford VEBA Plan).

The Independent Fiduciary will discharge its duties consistent with the terms of the Ford VEBA Plan, the Trust Agreement, the Independent Fiduciary's agreement, and any other documents governing the Securities, such as the Securityholder and Registration Rights Agreement, and any successors to those agreements.

The Ford VEBA Plan may not incur any fees, costs or other charges (other than described in the Trust Agreement and the 2009 Settlement Agreement) as a result of the transactions exempted herein.

The terms of any transaction exempted herein must be no less favorable to the Ford VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

#### *17. Conditions Related to Mispayments of Benefit Claims and Reimbursements*

Given the rapidity of the shifts in responsibility from the Ford Retiree Health Plan to the Ford VEBA Plan, a review of mispayments of benefit claims may not be undertaken until at some point following the Implementation Date. The conditions for reimbursements of mispayments require the following procedure for audit and reconciling payments.

The Committee and an independent third party administrator of the Ford VEBA Plan will review benefit payments paid during the transition period and determine the dollar amount of any mispayments made, subject to the review and approval of the VEBA Trust's independent auditor. The results of this review will be made available to Ford.

Ford and the applicable third party administrator of the medical benefits plan maintained by Ford to provide benefits to eligible active hourly employees of Ford and its participating subsidiaries (the Ford Active Health Plan) will perform similar reviews with respect to the amount of mispayments made. Ford will provide the results of the reviews to the Committee.

Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement. Interest will be determined using the applicable published "Official British Banker's Association Six Month London

(xii) any circumstance that leads the Committee to reasonably conclude that the termination of the Independent Fiduciary and replacement by a successor Independent Fiduciary is in the financial interest of the VEBA Trust, provided that the Committee documents the reasons for the termination.

Interbank Offered Rate (LIBOR) 11:00 a.m. GMT 'fixing' as reported on Bloomberg page 'BBAM' (the published six month LIBOR rate).<sup>28</sup>

Any dispute as to the amount, timing, or other feature of the mispayment and/or reimbursement shall be settled in accordance with the dispute resolution procedure found in Section 26B of the 2009 Settlement Agreement (the Dispute Resolution Procedure), which reads in pertinent part:

(i) The aggrieved party shall provide the party alleged to have violated this Settlement Agreement (Dispute Party) with written notice of such dispute, which shall include a description of the alleged violation and identification of the Section(s) of the Settlement Agreement allegedly violated. Such notice shall be provided so that it is received by the Dispute Party no later than 180 calendar days from the date of the alleged violation or the date on which the aggrieved party knew or should have known of the facts that give rise to the alleged violation, whichever is later, but in no event longer than 3 years from the date of the alleged violation; and (ii) If the Dispute Party fails to respond within 21 calendar days from its receipt of the notice, the aggrieved party may seek recourse to the District Court; provided however, that the aggrieved party waives all claims related to a particular dispute against the Dispute Party if the aggrieved party fails to bring the dispute before the District Court within 180 calendar days from the date of sending the notice. All the time periods in Section 26 of the 2009 Settlement Agreement may be extended by agreement of the parties to the particular dispute.

#### *18. Conditions Related to TAA True-Ups and Expense Accruals*

Due to the nature of the expenses charged by the entity in connection with the management of the assets in the TAA, the parties may not have accurate measures of the TAA's expenses at the time of transfer of the TAA to the VEBA Trust. As a result, the conditions for expense accruals and true-ups require the following procedure for audit and reconciling payments.

Ford and the Committee will cooperate in the calculation and review of the amounts of expense accruals related to the TAA, and the amount of any overaccrual shall be made subject to the review of an independent auditor selected by Ford and the amount of any underaccrual shall be made subject to

the review of the VEBA Trust's independent auditor.

A claim by Ford for an underaccrual must be made to the Committee within the Verification Time Period, which is defined as follows in Section VII(y) of the proposed exemption:

The term "Verification Time Period" means: (1) With respect to each of the Securities other than the payments in respect of the New Notes, the period beginning on the date of publication of the final exemption in the Federal Register (or, if later, the date of the transfer of any such Security to the VEBA Trust) and ending 90 calendar days thereafter; (2) with respect to each payment pursuant to the New Notes, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (3) with respect to the TAA, the period beginning on the date of publication of the final exemption in the Federal Register (or, if later, the date of the transfer of the assets in the TAA to the VEBA Trust) and ending 180 calendar days thereafter.

Accordingly, any claim regarding an underaccrual of expenses attributable to the TAA must be made within the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the assets in the TAA to the VEBA Trust) and ending 180 calendar days thereafter.

Interest on any true-up payment will accrue from the date of transfer of the assets in the TAA (or the LLC containing the assets in the TAA), until the date of payment of such true-up amount. Interest will be determined using the published six month LIBOR rate described above.

Any dispute as to the amount, timing or other feature of the true-up payment will be settled through the Dispute Resolution Procedure described above.

#### *19. Conditions Related to Mistaken Payments*

In the case of a mistaken deposit to the Ford VEBA Plan, Ford shall make a claim to the Committee regarding the particular deposit or transfer made in error or made in an amount greater than that to which the Ford VEBA Plan was entitled. The claim must be made within the Verification Time Period, which is described above.

Accordingly, any claim regarding a mistake with respect to transfer of the LLC Interests, the New Notes, or the Warrants must be made within the period beginning on the date of publication of the final exemption in the Federal Register (or, if later, the date of the transfer of any such Security to the VEBA Trust) and ending 90 calendar days thereafter. Any claim respecting a payment made under the New Notes must be made within the period

beginning on the date of the payment and ending 90 calendar days thereafter. Additionally, a claim with respect to the TAA must be made within the period beginning on the date of publication of the final exemption in the Federal Register (or, if later, the date of the transfer of the assets in the TAA to the VEBA Trust) and ending 180 calendar days thereafter.

Interest on any mistaken deposit will accrue from the date of the mistaken deposit or transfer to the date of the repayment. Interest will be determined using the published six month LIBOR rate, described above. In the event of a dispute regarding the amount, timing or other feature of the mistaken deposit, the Dispute Resolution Procedure described above shall apply.

#### *20. Statutory Findings*

The Applicant makes the following statements regarding the Department's required findings under section 408(a) of ERISA that the exemption is administratively feasible, in the interests of the Ford VEBA Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Ford VEBA Plan.

The exemption transactions are administratively feasible because they are relatively simple and straightforward, easy to monitor, and involve the management of the Securities by the Independent Fiduciary.

The exemption transactions are in the interest of the Ford VEBA Plan and of its participants and beneficiaries and protective of their rights because they constitute the only feasible mechanism to ensure that assets are dedicated to, and held in the Ford VEBA Plan solely for use as retiree health care benefits (and reasonable related expenses). In the absence of administrative relief, it is doubtful that Ford could provide alternate assets of equivalent economic value. Furthermore, the final terms of the 2009 Settlement Agreement, including the Securityholder and Registration Rights Agreement, and the terms of the New Notes, were thoroughly negotiated by a cadre of advisers representing the UAW and Class Counsel, each of whom has endorsed the subject transactions and fully supports the attendant proposal. As the Applicant contends, the process approving the settlement was rigorous and adversarial, and it ensures that the Class and the Covered Group receive the best possible terms under the circumstances.

As is contended by the Committee, the rights of participants and beneficiaries of the Ford VEBA Plan are

<sup>28</sup> LIBOR is calculated by Thomson Reuters and published by the British Bankers' Association after 11:00 a.m. (and generally around 11:45 a.m.) each day (London time). It is a trimmed average of interbank deposit rates offered by designated contributor banks, for maturities ranging from overnight to one year. The rates are a benchmark rather than a tradable rate, the actual rate at which banks will lend to one another continues to vary throughout the day.

protected by an independent committee, and their rights with respect to any Ford employer security are protected by the Independent Fiduciary, both of which will be subject to ERISA's general fiduciary obligations under section 404. The Independent Fiduciary will have the ability to dispose of the New Notes as it determines it to be in the best interests, and protective of the rights, of the Ford VEBA Plan and its participants and beneficiaries, so long as such sales are consistent with (1) the reasonable, agreed-to transfer restrictions imposed on those Securities; and (2) the registration rights provisions of those Securities.

#### Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the Applicant and the Department within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a "supplemental statement," as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing (where appropriate), with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the proposed exemption in the **Federal Register**.

#### 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 section 408(a) of ERISA does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of ERISA;

(2) Before an exemption may be granted under section 408(a) of ERISA, 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, if granted, will be supplemental to, and

not in derogation of, any other provisions of ERISA, 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, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

#### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), as follows:

##### *Section I. Covered Transactions*

(a) If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of ERISA shall not apply, effective December 31, 2009, to:

(1) The acquisition by the UAW Ford Retirees Medical Benefits Plan (the Ford VEBA Plan) and its funding vehicle, the UAW Retiree Medical Benefits Trust (the VEBA Trust) of: (i) The LLC Interests; (ii) New Note A; (iii) New Note B (together with New Note A, the New Notes); and (iv) Warrants to acquire 362,391,305 shares of Ford Common Stock at a strike price of \$9.20 per share, expiring on January 1, 2013, transferred by Ford and deposited in the Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust.

(2) The acquisition by the Ford VEBA Plan of shares of Ford Common Stock pursuant to Ford's right to settle its payment obligations under New Note B in shares of Ford Common Stock (*i.e.*, Payment Shares), consistent with the 2009 Settlement Agreement;

(3) The acquisition by the Ford VEBA Plan of shares of Ford Common Stock, pursuant to the Independent Fiduciary's exercise of all or a pro rata portion of the Warrants, consistent with the 2009 Settlement Agreement;

(4) The holding by the Ford VEBA Plan of the aforementioned Securities in the Ford Employer Security Sub-Account of the Ford Separate Retiree

Account of the VEBA Trust, consistent with the 2009 Settlement Agreement;

(5) The deferred payment of any amounts due under New Note B by Ford pursuant to the terms thereunder; and

(6) The disposition of the Securities by the Independent Fiduciary.

(b) If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to the sale of Ford Common Stock held by the Ford VEBA Plan to Ford in accordance with the Right of First Offer or a Ford self-tender under the Securityholder and Registration Rights Agreement.

(c) If the exemption is granted, the restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to:

(1) The extension of credit or transfer of assets by Ford, the Ford Retiree Health Plan, or the Ford VEBA Plan in payment of a benefit claim that was the responsibility and legal obligation, under the terms of the applicable plan documents, of one of the other parties listed in this paragraph;

(2) The reimbursement by Ford, the Ford Retiree Health Plan, or the Ford VEBA Plan, of a benefit claim that was paid by another party listed in this paragraph, which was not legally responsible for the payment of such claim, plus interest;

(3) The retention of an amount by Ford until payment to the Ford VEBA Plan resulting from an overaccrual of pre-transfer expenses attributable to the TAA or the retention of an amount by the Ford VEBA Plan until payment to Ford resulting from an underaccrual of pre-transfer expense attributable to the TAA; and

(4) The Ford VEBA Plan's payment to Ford of an amount equal to any underaccrual by Ford of pre-transfer expenses attributable to the TAA or the payment by Ford to the Ford VEBA Plan of an amount equal to any overaccrual by Ford of pre-transfer expenses attributable to the TAA.

(d) If the exemption is granted, the restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to the return to Ford of assets deposited or transferred to the Ford VEBA Plan by mistake, plus interest.

##### *Section II. Conditions Applicable to Section I(a) and I(b)*

(a) The Committee appoints a qualified Independent Fiduciary to act on behalf of the Ford VEBA Plan for all purposes related to the transfer of the



Securities to the Ford VEBA Plan for the duration of the Ford VEBA Plan's holding of the Securities. Such Independent Fiduciary will have sole discretionary responsibility relating to the holding, ongoing management and disposition of the Securities, except for the voting of the Ford Common Stock. The Independent Fiduciary has determined or will determine, before taking any actions regarding the Securities, that each such action or transaction is in the interest of the Ford VEBA Plan.

(b) In the event that the same Independent Fiduciary is appointed to represent the interests of one or more of the other plans comprising the VEBA Trust (*i.e.*, the UAW Chrysler Retiree Medical Benefits Plan and/or the UAW General Motors Company Retiree Medical Benefits Plan) with respect to employer securities deposited into the VEBA Trust, the Committee takes the following steps to identify, monitor and address any conflict of interest that may arise with respect to the Independent Fiduciary's performance of its responsibilities:

(1) The Committee appoints a "conflicts monitor" to: (i) Develop a process for identifying potential conflicts; (ii) regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict; and (iii) further question the Independent Fiduciary when appropriate.

(2) The Committee adopts procedures to facilitate prompt replacement of the Independent Fiduciary if the Committee in its sole discretion determines such replacement is necessary due to a conflict of interest.

(3) The Committee requires the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy shall require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflicts.

(c) The Independent Fiduciary authorizes the trustee of the Ford VEBA Plan to dispose of the Ford Common Stock (including any Payment Shares or any shares of Ford Common Stock acquired pursuant to exercise of the Warrants), the LLC Interests, the New Notes, or exercise the Warrants, only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the Ford

VEBA Plan, and protective of the participants and beneficiaries of the Ford VEBA Plan.

(d) The Independent Fiduciary negotiates and approves on behalf of the Ford VEBA Plan any transactions between the Ford VEBA Plan and any party in interest involving the Securities that may be necessary in connection with the subject transactions (including but not limited to the registration of the Securities contributed to the Ford VEBA Plan).

(e) Any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

(f) The Independent Fiduciary discharges its duties consistent with the terms of the Ford VEBA Plan, the Trust Agreement, the Independent Fiduciary Agreement, and any other documents governing the Securities, such as the Registration Rights Agreement.

(g) The Ford VEBA Plan incurs no fees, costs or other charges (other than described in the Trust Agreement, the 2009 Settlement Agreement, and the Securityholder and Registration Rights Agreement) as a result of the transactions exempted herein.

(h) The terms of any transaction exempted herein are no less favorable to the Ford VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

#### *Section III. Conditions Applicable to Section I(c)(1) and I(c)(2)*

(a) The Committee and the Ford VEBA Plan's third party administrator will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the Ford VEBA Plan's independent auditor. The results of this review will be made available to Ford.

(b) Ford and the applicable third party administrator of the Ford Active Health Plan will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the plan's independent auditor. The results of this review will be made available to the Committee.

(c) Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement.

(d) Interest will be determined using the applicable 6 month published LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a

reimbursement payment, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

#### *Section IV. Conditions Applicable to Section I(c)(3) and I(c)(4)*

(a) Ford and the Committee will cooperate in the calculation and review of the amounts of expense accruals related to the TAA, and the amount of any overaccrual shall be made subject to the review of an independent auditor selected by Ford and the amount of any underaccrual shall be made subject to the review of the Ford VEBA Plan's independent auditor.

(b) Ford must make a claim for any underaccrual to the Committee, and the Committee must make a claim for any overaccrual to Ford, as applicable, within the Verification Time Period, as defined in Section VII(y).

(c) Interest on any true-up payment will accrue from the date of transfer of the assets in the TAA (or the LLC containing the TAA) for the amount in respect of the overaccrual or underaccrual, as applicable, until the date of payment of such true-up amount.

(d) Interest will be determined using the published six month LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a true-up payment in respect of TAA expenses, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

#### *Section V. Conditions Applicable to Section I(d)*

(a) Ford must make a claim to the Committee regarding the specific deposit or transfer made in error or made in an amount greater than that to which the Ford VEBA Plan was entitled.

(b) The claim is made within the Verification Time Period, as defined in Section VII(y).

(c) Interest on any mistaken deposit or transfer will accrue from the date of the mistaken deposit or transfer to the date of the repayment.

(d) Interest will be determined using the published six month LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a mistaken payment, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

### Section VI. Conditions Applicable to Section I

(a) The Committee and the Independent Fiduciary maintain for a period of six years from the date (i) the Securities are transferred to the Ford VEBA Plan, and (ii) the shares of Ford Common Stock are acquired by the Ford VEBA Plan through the exercise of the Warrants or Ford's delivery of Payment Shares in settlement of its payment obligations under New Note B, the records necessary to enable the persons described in paragraph (b) below to determine whether the conditions of this exemption have been met, provided that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (b) below; and

(b) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (a) above shall be unconditionally available at their customary location during normal business hours to:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) the UAW or any duly authorized representative of the UAW;

(C) Ford or any duly authorized representative of Ford;

(D) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(E) the Committee or any duly authorized representative of the Committee; and

(F) any participant or beneficiary of the Ford VEBA Plan or any duly authorized representative of such participant or beneficiary.

### Section VII. Definitions

(a) The term "affiliate" means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, partner, or employee in any such person, or relative (as defined in section 3(15) of ERISA) of any such person; or (3) any corporation, partnership or other entity of which such person is an officer, director or partner. (For purposes of this

definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual).

(b) The "Committee" means the eleven individuals consisting of six independent members and five UAW appointed members who will serve as the plan administrator and named fiduciary of the Ford VEBA Plan.

(c) The term "Dispute Resolution Procedure" means the process found in Section 26B of the 2009 Settlement Agreement to effectuate the resolution of any dispute respecting the transactions described in Sections I(c)(1), (c)(2), (c)(3), (c)(4), and (d) herein, and which reads in pertinent part: (1) The aggrieved party shall provide the party alleged to have violated the 2009 Settlement Agreement (Dispute Party) with written notice of such dispute, which shall include a description of the alleged violation and identification of the Section(s) of the 2009 Settlement Agreement allegedly violated. Such notice shall be provided so that it is received by the Dispute Party no later than 180 calendar days from the date of the alleged violation or the date on which the aggrieved party knew or should have known of the facts that give rise to the alleged violation, whichever is later, but in no event longer than 3 years from the date of the alleged violation; and (2) If the Dispute Party fails to respond within 21 calendar days from its receipt of the notice, the aggrieved party may seek recourse to the District Court; provided however, that the aggrieved party waives all claims related to a particular dispute against the Dispute Party if the aggrieved party fails to bring the dispute before the District Court within 180 calendar days from the date of sending the notice. All the time periods in Section 26 of the 2009 Settlement Agreement may be extended by agreement of the parties to the particular dispute.

(d) The term "Exchange Agreement" means the Security Exchange Agreement among Ford, the subsidiary guarantors listed in Schedule I thereto and the LLC, effective as of November 9, 2009.

(e) The term "Ford" or the "Applicant" means Ford Motor Company, located in Detroit MI, and its affiliates.

(f) The term "Ford Active Health Plan" means the medical benefits plan maintained by Ford to provide benefits to eligible active hourly employees of Ford and its participating subsidiaries.

(g) The term "Ford Common Stock" means the shares of common stock, par value \$0.01 per share, issued by Ford.

(h) The term "Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust" means the sub-account established in the Ford Separate Retiree Account of the VEBA Trust to hold Securities on behalf of the Ford VEBA Plan.

(i) The term "Ford Retiree Health Plan" means the retiree medical benefits plan maintained by Ford that provided benefits to, among others, those who will be covered by the Ford VEBA Plan.

(j) The term "Implementation Date" means December 31, 2009.

(k) The term "Independent Fiduciary" means a fiduciary that is (1) independent of and unrelated to Ford, the UAW, the Committee, and their affiliates, and (2) appointed to act on behalf of the Ford VEBA Plan with respect to the holding, management and disposition of the Securities. In this regard, the fiduciary will be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Ford, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Ford, the UAW or any Committee member in his or her individual capacity in connection with any transaction contemplated in this exemption (except that an Independent Fiduciary may receive compensation from the Committee or the Ford VEBA Plan for services provided to the Ford VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Ford, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.<sup>29</sup>

(l) The term "LLC" means the Ford-UAW Holdings LLC, established by Ford as a wholly-owned LLC to hold the assets in the TAA and certain other assets required to be contributed to the VEBA under the 2008 Settlement

<sup>29</sup> The Department notes that the preceding conditions are not exclusive, and that other circumstances may develop which cause the Independent Fiduciary to be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates.

Agreement, namely (1) a convertible note due January 1, 2013 with an aggregate principal amount of \$3.3 billion bearing 5.75% interest per annum payable semi-annually (the Convertible Note), and (2) a term note due January 1, 2018 with a principal amount of \$3.0 billion bearing 9.50% interest per annum payable semi-annually (the Term Note).

(m) The term "LLC Interests" means Ford's wholly-owned interest in the LLC.

(n) The term "New Note A" means the amortizing guaranteed secured note maturing on June 30, 2022, in the principal amount of \$6,705,470,000, with payments to be made in cash, in annual installments from 2009 through 2022, issued by Ford and referred to in the Exchange Agreement.

(o) The term "New Note B" means the amortizing guaranteed secured note maturing June 30, 2022, in the principal amount of \$6,511,850,000, with payments to be made in cash, Ford Common Stock, or a combination thereof, in annual installments from 2009 through 2022, issued by Ford and referred to in the Exchange Agreement.

(p) The term "published six month LIBOR rate" means the Official British Banker's Association Six Month London Interbank Offered Rate (LIBOR) 11:00am GMT "fixing" as reported on Bloomberg page "BBAM".<sup>30</sup>

(q) The term "Securities" means (1) New Note A; (2) New Note B; (3) the Warrants; (4) the LLC Interests, (5) any Payment Shares, and (6) additional shares of Ford Common Stock acquired pursuant to the Independent Fiduciary's exercise of the Warrants.

(r) The term "Securityholder and Registration Rights Agreement" means the Securityholder and Registration Rights Agreement by and among Ford and Ford-UAW Holdings LLC, effective as of November 9, 2009.

(s) The term "2008 Settlement Agreement" means the settlement agreement, effective as of August 29, 2008, entered into by Ford, the UAW, and a class of retirees in the case of *Int'l Union, UAW, et al. v. Ford Motor Company*, Civil Action No. 07-14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008).

(t) The term "2009 Settlement Agreement" means the 2008 Settlement Agreement, as amended by an Amendment to such Settlement

Agreement dated July 23, 2009, effective as of November 9, 2009, entered into by Ford, the UAW, and a class of retirees in the case of *Int'l Union, UAW, et al. v. Ford Motor Company*, Civil Action No. 07-14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008), *Order and Final Judgment Granted*, Civil Action No. 07-14845, Doc. #71, (E.D. Mich. Nov. 9, 2009).

(u) The term "TAA" means the temporary asset account established by Ford under the 2008 Settlement Agreement to serve as tangible evidence of the availability of Ford assets equal to Ford's obligation to the Ford VEBA Plan.

(v) The term "Trust Agreement" means the trust agreement for the VEBA Trust.

(w) The term "UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

(x) The term "VEBA" means the Ford UAW Retirees Medical Benefits Plan (the Ford VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(y) The term "Verification Time Period" means: (1) With respect to each of the Securities other than the payments in respect of the New Notes, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of any such Security to the Ford VEBA Plan) and ending 90 calendar days thereafter; (2) with respect to each payment pursuant to the New Notes, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (3) with respect to the TAA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the assets in the TAA to the Ford VEBA Plan) and ending 180 calendar days thereafter.

(z) The term "Warrants" means warrants to acquire shares of Ford Common Stock, par value \$0.01 per share, issued by Ford.

Signed at Washington, DC, this 3rd day of December 2009.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E9-29223 Filed 12-7-09; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of November 2009.

**Richard Church,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

<sup>30</sup> LIBOR is calculated by Thomson Reuters and published by the British Bankers' Association after 11 a.m. (and generally around 11:45 a.m.) each day (London time). It is a trimmed average of inter-bank

deposit rates offered by designated contributor banks, for maturities ranging from overnight to one year. The rates are a benchmark rather than a tradable rate, the actual rate at which banks will

lend to one another continues to vary throughout the day.