

Retiree Health Care

What Do the New Auto Industry VEBAs Mean for Current and Future Retirees?

Retiree health care VEBAs offer the automakers relief from rising health care costs, but may put health care for retirees at risk. How secure is the funding for these VEBAs and how long it will last? And, what do VEBAs mean for the national health care reform debate?

Voluntary employees' beneficiary associations (VEBAs) have made national headlines over the past several months as General Motors, Chrysler, and Ford reached agreements with the United Automobile Workers union to eliminate their retiree health care liabilities. In separate negotiations this fall, each of the three U.S. automakers reached an agreement to contribute a percentage of its projected retiree liabilities to a fund—a VEBA trust. Rather than maintain a promise to pay for (otherwise uncapped) defined health care benefits for current and future retirees, the automakers will make negotiated contributions to VEBA trusts from which all future retiree health benefits will be paid. The VEBA agreement lets G.M. move a projected \$46.7 billion in retiree health obligations off its balance sheet; Ford will transfer retiree health care liabilities totaling \$23.7 billion to a trust; and Chrysler will shed a roughly \$18.3 billion liability.

Moving liabilities off the balance sheet is viewed by the automakers as a necessary component of restructuring efforts to lower costs and restore industry competitiveness. The *Wall Street Journal* called the agreement to establish G.M.'s retiree health care VEBA the most important concession made by the union in the contract negotiations.¹ G.M.'s VEBA is said to promise a “huge savings” and a “huge escape from risk” for the company.² Some stock analysts predicted a doubling of G.M.'s share price if the company got its retiree health care VEBA.³ The companies also will see large reductions in annual health care expense and significant

improvements in cash flow. Ford expects an annual net cash flow benefit of about \$1 billion, including health care savings of \$1.6 billion.⁴

There has been somewhat less discussion of what the VEBAs mean for the automakers' current and future U.A.W. retirees. VEBAs can be a tool for efficient and effective funding of retiree health care and a mechanism for increasing the stability of retiree coverage. But VEBAs can also be a mechanism for eliminating employers' health care inflation risk and for shifting risk and responsibility to employees. This policy brief describes the auto industry's recent retiree health care VEBAs and discusses the implications of these agreements for current and future retirees. It closes with questions for the future, including whether other industries will shift retiree health care liabilities to VEBA trusts and how a proliferation of large VEBAs may help shape the debate about national health care reform.

What Is a VEBA?

A VEBA—voluntary employees' beneficiary association—is a trust that holds funds to meet the cost of health and welfare benefits. VEBAs can be used to pay for a variety of health and welfare benefits, including retiree health benefits and life and disability insurance. VEBAs can be established most easily by employers or unions for individuals who have “an employment-related common bond.”⁵ The trusts can be funded by employer contributions, employee contributions, or both, and they can be funded

over time, through a one-time contribution, or with a mix of upfront and annual contributions. The funds in a retiree health VEBA trust must be used to provide retiree benefits; the trust is irrevocable (the funds may not be returned to the employers until all liabilities are exhausted); and trustees are subject to fiduciary responsibilities under the Employee Retirement Income Security Act (ERISA).

Section 501(c)(9) of the Internal Revenue Code establishes VEBAs' tax-exempt status.⁶

Employer contributions to VEBAs are deductible within limits; employee contributions are made with after-tax dollars. To qualify as tax-exempt, contributions to a VEBA trust have to be made on a consistent basis and dedicated to a tax-qualified purpose. Contributions typically are tax-deductible only up to certain limits.⁷

Private, nonunion employers, for example, can prefund for future years, but contributions for future years must be based on current costs. That is, employers have to assume that spending in future years will be the same as per retiree spending in the current year, with no allowance for inflation or utilization growth. VEBAs are subject to unrelated business income tax to the extent that contributions exceed these limits, and the assets that accumulate in the VEBA are taxed at trust rates.⁸

Collectively bargained plans are offered more favorable tax treatment. The funding limits and tax on unrelated business income do not apply if the employees covered by the VEBA are covered by a collective bargaining agreement. Thus, VEBAs established under collective bargaining agreements benefit from tax-deductible contributions and tax-free accumulation of earnings. For all trusts, those formed under collective bargaining agreements and those not, health benefits funded through a VEBA are tax-free to retirees and their eligible dependents and survivors. Employee-pay-all VEBAs, where employees alone contribute to the trust, and VEBAs of tax-exempt employers also receive more favorable tax treatment—they are not subject to the unrelated business income tax.

VEBAs can be used to finance health care reimbursement accounts or defined contribution

or defined benefit health plans. Under the individual account approach, employees make defined contributions to a trust, and the benefit paid in retirement is the amount of total contributions plus earnings. Contributions can also go into a pooled account, with the benefit structured in one of two ways: the benefit can be a fixed monthly dollar amount that pays for retiree medical premiums or other qualified expenses, or the trust may provide benefits under a traditional health benefit plan.⁹

What Do VEBAs Do?

Over the past decade, employers have made significant changes to retiree health insurance benefits, reducing—and in some cases—eliminating coverage, and shifting costs to retirees. Without a firm contract, and most nonunion employees don't have one, employers can change benefits—even for people who have already retired—at any time. And, even when there is a contract, as is the case for collectively bargained plans, the employer can shed its promised benefits in a bankruptcy proceeding.

The VEBAs currently receiving attention in the press are a part of this widespread erosion in retiree health insurance coverage prompted by both rapid increases in the cost of providing benefits to retirees and the pressures of increasingly competitive global markets. The cost of providing health care coverage to retirees has risen rapidly over the past decade. Employer spending on retiree health care increased by more than 16 percent in 2002 and continued to grow at double-digit rates through 2005.¹⁰ Rising costs have led many employers to limit benefits, require retirees to pay a larger share of the costs, or stop offering coverage (usually for new employees or those yet to retire).

Accounting rules implemented in the early 1990s also marked a key turning point for retiree coverage. Until the 1990s, private companies simply showed current-year spending for retiree health benefits as an expense in their financial reports. The companies were required to show unfunded future pension costs as a liability in their financial reports, but not the unfunded portion of expected future costs for other retiree

benefits, including health care.¹¹ In 1990, the Financial Accounting Standards Board—which sets accounting standards for public companies in the United States—released Financial Accounting Standard No. 106.¹² This standard requires public companies to expense costs for future retiree health benefits over their employees’ working lifetime instead of just current-year spending. They must also show a liability of these benefits in their financial statements. As of 2007, companies must show the full funded status of post-retirement benefits on the balance sheet itself and not just in a footnote in the financial statement.¹³

FAS 106 highlighted the magnitude of retiree health liabilities in the private sector, prompting many companies to drop benefits for future retirees or adopt other cost-cutting measures. Some benefit changes affected costs immediately; others, such as premium caps (i.e., a cap on the employer contribution toward premiums), made future liabilities more fixed and predictable compared to the indeterminate liability of open-ended plans.¹⁴ Today, similar changes are being implemented for state and local governments by the Governmental Accounting Standards Board, provoking similar concerns about the size of the liabilities and their financing.

Prefunding retiree health care through a VEBA can reduce the long-term unfunded liability that businesses report on their financial statements and provide a greater degree of security for workers who expect to receive retiree health benefits by leveraging investment returns. There is, however, relatively little prefunding of retiree health benefits. As of December 2005, employers included in the Standard & Poor’s 500 had funded just 22 percent of their expected costs for health and other nonpension retiree benefits, compared to 90 percent of their expected pension liability.¹⁵

Part of the reason for the relative lack of funding for retiree health care is that employers are not required to fund those benefits—unlike pensions, for which ERISA requires minimum funding. Another reason is that employers may view retiree health benefits as a conditional and

uncertain liability. They are unwilling to guarantee that they won’t eliminate retiree health benefits and don’t want to give the impression they are guaranteed by funding those benefits. The irrevocable nature of a prefunded trust also raises concerns for some employers, as does the fact that the prefunding draws down capital the company could otherwise use in its “primary” investments.¹⁶ Also, given the VEBA restrictions, there is no good way for for-profit, nonunionized employers to prefund to retiree health benefits. Employers by and large have opted for reducing or otherwise limiting future benefits and continuing to pay for them on a pay-as-you-go basis.¹⁷

But VEBAs can also be used to shift the risk of uncertain health care costs to current and future retirees. This last option characterizes much of the recent VEBA activity. The VEBAs established by the automakers, and a number of other recent VEBAs, eliminate or substantially reduce employers’ liabilities for retiree health care by transferring the retiree benefit obligation to the union. The contract exchanges a promise to provide a defined benefit health care plan in retirement for a promise to fund a VEBA trust—a shift to a defined contribution that becomes much more predictable for the employer. Employers may even require that all contributions come from mandatory employee contributions, shifting the risk entirely to employees.¹⁸

VEBAs have been around for decades and were used frequently beginning in the 1980s as a kind of “hospice care” for workers in declining industries.¹⁹ VEBA trusts have been designed to preserve benefits—sometimes only for several weeks or months—for retirees who otherwise would lose them altogether. VEBAs also offer companies—especially those in (or on the edge of) bankruptcy—the opportunity to take future projected liabilities off their balance sheets and, assuming they fund them at a discount, improve their standing in credit markets (see Box 1).

Box 1. Other Recent Retiree Health Care VEBAs

AK Steel, 2007. In October 2007, AK Steel reached an agreement to establish a \$663 million VEBA for roughly 4,600 current retirees of its Middletown Works. The VEBA settles a lawsuit stemming from the company's 2006 initiatives to reduce its retiree health care costs. AK Steel will fund a trust from which all future retiree health care benefits will be paid, ending the company's obligation. The trust will be funded with an initial contribution of \$468 million and three subsequent annual contributions of \$65 million each, for a total of \$663 million. The trust will be funded through one or more sources, including the company's existing cash balances and credit facilities and, possibly, the capital markets.²⁰

Dana Corporation, 2007. In July 2007, the U.S.W. and the U.A.W. agreed to replace health care and long-term disability obligations for union employees and retirees at Dana—the bankrupt auto-parts maker—with a VEBA. Dana agreed to contribute \$700 million in cash and \$80 million in common stock of the reorganized Dana to the trust. In exchange, the unions agreed to allow Dana to terminate its obligation to provide union workers with nonpension retiree benefits and long-term employee disability benefits. The company will continue to provide benefits for these retirees and employees under its existing plans until it emerges from bankruptcy. Dana has approximately \$1.1 billion in unfunded, nonpension benefit and long-term disability obligations under its U.S. postretirement health care plans for U.S.W. - and U.A.W.-represented retirees and employees.²¹

Goodyear Tire, 2006. In December 2006, Goodyear Tire and the U.S.W. arrived at a strike-ending agreement that included a VEBA. Goodyear agreed to transfer its \$1.2 billion in health care liability for U.S.W. retirees to a fund managed by the union, making a one-time, \$1 billion payment in cash and stock into the VEBA. The agreement states that the company will have no further obligation to its retirees, current or future. Goodyear's \$1 billion upfront contribution to the trust will consist of at least \$700 million in cash, with the balance in additional cash or common stock at the company's option.²²

Detroit Diesel, 1993. In January 1993, Detroit Diesel and the U.A.W. agreed on retiree health benefits that capped the company's obligation to pay premiums to a fixed amount per retiree. A VEBA trust was funded to pay any above-the-cap costs. The purpose of the cap agreement was to alter Detroit Diesel's method of funding retiree health coverage. According to the company, retiree health care benefits for eligible retirees were vested (the retiree health benefits are lifetime benefits), and that contribution limits did not negate that commitment. Subsequent cap agreements were reached in 1994 and 1999 that funded the VEBA trust, but negotiations covering 2005–2010 broke down. The VEBA trust was exhausted, and no agreement was reached regarding continuing health care benefits for 1993–2004 retirees. Without the trust funding, the company sought to force retired employees to make premium contributions (for costs above the cap) to maintain their health coverage. U.A.W. retirees are suing to prevent Detroit Diesel from enforcing the cap and making them pay monthly premiums of as much as \$834.²³

Navistar, 1992. A 1992 labor agreement provided Navistar International's U.A.W. retirees with "modified" health benefits for life. (The new or modified plan imposed new premiums and other cost sharing on retirees.) The agreement substantially reduced Navistar's liability for future retiree health care, from \$2.6 billion to \$1 billion. Navistar set up an employee trust in 1992 with \$500 million (or 50 percent of liabilities), funded by proceeds of the sale of 255 million new shares of common stock. In addition, the company agreed to make additional profit-sharing contributions.²⁴

Caterpillar, 1992. In 1992, in the midst of a long and contentious labor dispute, heavy-equipment maker Caterpillar unilaterally implemented key changes to active and retiree health care benefits, introducing a health care network and setting monetary limits or "caps" on the amounts Caterpillar would spend on

Box 1, continued

retiree health care. Six years later, in March 1998, a contract agreement was finally reached that incorporated the retiree health care reductions. At that time, the company and the union reached an agreement to redistribute approximately \$35 million (from overtime pay and training funds for active employees) to a VEBA to offset expenses retirees incurred above the company-established spending caps. Caterpillar made no promise to provide any additional or future funding to the VEBA, and the trust itself was designed to last roughly six years, until the next contract negotiation.²⁵ U.A.W. retirees are suing Caterpillar to prevent the company from reducing their promised (no-cost) retiree health benefits.

The Automakers' New (Big) VEBAs

Faced with increasingly competitive markets, smaller workforces, and growing numbers of retirees, the U.S. automakers have looked for ways to reduce costs. A central feature of the recovery strategy for all three U.S. automakers is reducing the burden of their accumulated health obligations to hourly retirees (roughly 540,000 retirees and surviving spouses, or about three beneficiaries for every active hourly employee).²⁶ At one time, U.S. automakers were able to pass these additional costs on to customers more easily. Today, faced with stiffer competition from foreign manufacturers who are not “saddled” with these costs, the U.S. automakers contend that they must lower costs to stay competitive in the global marketplace.²⁷ With sales and market share in decline, the U.S. automakers argue that retiree health care benefits stand out as a major difference in competitive pricing. The U.A.W., in turn—faced with wage and job losses and presented with evidence about the companies’ financial instability—has agreed to accept some cuts in promised benefits.

The 2005 VEBAs

The 2007 VEBAs were not the first the U.A.W. has agreed to, but they are by far the largest.²⁸ In 2005, the U.A.W. reached agreements with both G.M. and Ford to establish VEBAs. For only the second time in its 72-year history, the U.A.W. reopened its contract in October 2005 in response to G.M.’s claim that retiree health care costs were hindering the company’s ability to compete and pushing it toward bankruptcy.²⁹ The U.A.W. agreed to negotiate changes to retiree benefits at G.M., and a few months later, the union agreed to

similar changes at Ford.³⁰ (The U.A.W. did not grant the same concessions to Chrysler).

During the 2005 discussions, G.M. asserted that it had the right to unilaterally modify or terminate health care benefits applicable to its U.A.W. retirees. And, without an agreement to reduce the company’s retiree health care burden, G.M. said it would act unilaterally. The U.A.W. argued that the retiree health benefits were vested, but ultimately concluded that cost reductions were needed to assure the company’s financial stability.³¹

For the first time, the resulting agreements imposed cost-sharing requirements on G.M.’s and Ford’s U.A.W. retirees. Increases in premiums, copayments, and deductibles were expected to cost retirees an average of \$752 in the first year. Three basic safeguards were included to lessen the financial impact on retirees and their families: (1) low-income retirees (those with an annual pension benefit of \$8,000 or less) were exempted from the increases in cost sharing; (2) annual increases in retiree cost sharing were capped at 3 percent; and (3) a defined contribution VEBA (DC-VEBA) was established to mitigate the increases in cost sharing. For example, although the new plan imposes an annual premium (of \$50 for single participants and \$105 for family coverage), DC-VEBA assets are used to reduce those monthly contributions by 80 percent (to \$10 and \$21, respectively). Similarly, the annual deductible is reduced by half (from \$300 to \$150 for individuals and \$600 to \$300 for families), as is the out-of-pocket cap on cost sharing (which is reduced from \$500 to \$250 for individuals, and \$1,000 to \$500 for families).

The negotiated changes to retiree health care significantly reduced the companies' retiree health care liabilities. At G.M., for example, these changes (together with some other administrative plan changes) yielded a gross reduction of \$17 billion in G.M.'s liability for retiree health care and other postemployment benefits.³²

The 2007 VEBAs

The 2007 VEBA agreements pick up where the 2005 agreements left off. Under the terms of the 2007 collective bargaining agreements, the automakers' obligations to provide postretirement medical benefits are not just reduced; they are eliminated from the balance sheet (pending SEC approval). Effective January 1, 2010 (or when any appeals or court challenges are exhausted³³), responsibility for providing and paying for retiree health benefits will be shifted permanently to new retiree plans funded by VEBA trusts. An independent board of union- and court appointed trustees will have oversight responsibility, making decisions about both how the funds should be invested and how health care benefits will be delivered. In addition, the union gives up the right to negotiate retiree health care with the automakers. The 2007 VEBA agreements incorporate the 2005 health care agreements negotiated at G.M. and Ford and grant the 2005 concessions to Chrysler. The DC-VEBA assets will be shifted to the new VEBAs, and the coverage negotiated in 2005 is preserved—at least over the short term.³⁴

The parties negotiated the levels at which these very large trusts are funded and how they are funded. The costs of retiree medical benefits depend on the future costs of health care, changes in health care delivery and utilization patterns, and, perhaps, future breakthroughs in medical science. The costs of employment-based retiree

programs are also directly affected by changes in Medicare benefits or payment levels. The pattern of future costs is sensitive to all of these factors, which are difficult to predict and hard for any single payer to control.

Faced with substantial uncertainty about costs and liabilities, the U.A.W.'s goal was to assure that the trusts were funded with sufficient cash and other assets to provide lifetime solvency. The automakers were interested in eliminating their obligations to provide retiree coverage if they could do so at an acceptable cost. Indeed, the VEBAs improve the companies' balance sheets only because the VEBAs are underfunded.

Although the automakers have a combined estimated retiree health care liability of \$88.7 billion, total contributions to the VEBA trusts will amount to just \$56.5 billion (see Table 1). Specifically, under a contract signed by the parties and ratified by union members, G.M. is funding a VEBA at 68 percent of its estimated \$46.7 billion obligation; the contributions from Ford and Chrysler amount to roughly 60 percent and 57 percent, respectively, of their liabilities. The retiree health care liabilities shown in Table 1 are present values. That is, the liabilities reflect the value of all future benefits expected to be paid discounted to present value at an assumed interest rate. The present value reflects the dollar amount needed today that, with future investment earnings, would be adequate to pay all future benefits as they come due. The significant discount is what allows each of three companies to improve its balance sheet. Otherwise, each company's obligation to pay into the VEBA would be identical to the amount it would have to show as the present value of future promised benefits.

TABLE 1
Funding Levels for the Auto Industry VEBAs

	GM	Ford	Chrysler	Total
Total VEBA Funding	\$31.9 billion	\$13.6 billion	\$11 billion	\$56.5 billion
Retiree Health Care Liabilities	\$46.7 billion	\$23.7 billion	\$18.3 billion	\$88.7 billion
VEBA Funding as a Share of Projected Liabilities	68%	57%	60%	64%

Source: G.M. and Ford Investor Presentations, U.A.W Chrysler Report.³⁵

The VEBAs are funded with a combination of cash and stock through employer and employee contributions. For example, the G.M. VEBA is funded with upfront contributions, including the assets of the DC-VEBA, a convertible note (face value \$4.4 billion), and \$2.5 billion cash. In addition, contributions to the trust come from active workers who give up some of their future cost-of-living and wage increases. Active workers will give up more than \$1 an hour (more than \$2,000 annually per worker) to help fund the trust.

Each of the three companies has also agreed to make additional “backstop” payments. G.M. will make up to 20 additional annual payments of \$165 million each to fund the trust; Chrysler will make up to 20 additional annual \$50 million payments; and Ford will make up to 15 additional \$52 million payments. In each case, these “backstop” payments will be made any time the individual VEBA’s funding level is projected to be insufficient to provide current benefit levels for at least 25 years from the date of the required

payment (see Table 2). Under the industry practice of “pattern bargaining,” the agreements are broadly similar, but the specifics vary somewhat across the three automakers. The U.A.W. gave greater concessions to Ford, for example.

In the case of Ford, the U.A.W. agreed to a funding proposal that includes far less upfront cash and other concessions that reduce Ford’s costs. Ford’s VEBA contributions include \$3.8 billion in assets from an existing VEBA, \$2.7 billion in cash, a convertible note with a face value of \$3.3 billion, a second lien term note with a face value of \$3.0 billion, and deferred payments of \$400 million, for total VEBA funding of \$13.6 billion (see Table 2). Deferred payments make up 22 percent of Ford’s contribution to its VEBA, compared to 16 percent for G.M.³⁶ Under another somewhat more favorable term to Ford, the company will pay 5.75 percent interest on its convertible note, while G.M. will pay 6.75 percent on a similar instrument.

TABLE 2

How the Auto Industry VEBAs Are Funded

	GM	Ford	Chrysler
Funding Mechanisms and Amount (present value)	<ul style="list-style-type: none"> Existing VEBA (\$16 billion) Convertible note (face value \$4.4 billion) COLA and wage diversion (\$3.8 billion) Cash (\$2.5 billion) Pension pass-through (\$1.7 billion) Contingent cash payments (up to 20 additional payments of \$165 million/year) (\$1.6 billion) Retiree health care payments through 1/1/2010 (\$5.4 billion) 	<ul style="list-style-type: none"> Existing VEBA (\$3.8 billion) Convertible note (\$3.3 billion) Second-lien note (\$3 billion) Cash (\$2.7 billion) Deferred payments (up to 15 additional payments of \$52 million/year) (\$450 million) Retiree health care payments through 1/1/2010 (\$2.2 billion) 	<ul style="list-style-type: none"> Cash (\$7.1 billion) Debenture (face value \$1.2 billion) COLA diversion Warrant (\$605 million) Pension pass-through Contingent cash payments (up to 20 additional payments of \$50 million/year) (\$487 million) Retiree health care payments through 1/1/2010 (\$1.5 billion)

Source: See Table 1.

Note: Table 2 identifies the major components of the proposed funding. For amounts paid in installments, the value shown is the current value of the future payments. The table is intended to be illustrative, so the components may not add up to the totals in Table 1. Complete accounting statements for G.M. and Ford can be found in the investor presentations cited at Table 1.

Risks to Current and Future U.A.W. Retirees

U.A.W. retirees and their dependents have been promised lifetime health care coverage—benefits that have been an object of collective bargaining over more than half a century. Current and future U.A.W. retirees have worked, often for decades, expecting that the automakers will fulfill the promise set out in collective bargaining agreements and other plan documents. Current U.A.W. retirees are relatively well insulated from the risks of rising health care costs; they receive comprehensive coverage with relatively limited cost-sharing obligations. Beginning January 1, 2010, the VEBA will begin funding these benefits at the same level. According to the U.A.W., the trust fund can be secure for the next 80 years, winning security for workers and retirees and shielding current and future retirees from the effects of a potential bankruptcy of one or more of the U.S. automakers. For current and future retirees, however, the VEBA agreements trade off one set of risks—that the automakers will insist on even greater concessions on retiree health care, for

example—for another: that benefits will be eroded if VEBA funding proves inadequate.

Estimating Future Liabilities Is Fraught with Uncertainty

The major risks to U.A.W. retirees derive from the unpredictability of both health care costs and investment returns. If returns don't meet expectations, or costs grow more rapidly than projected, the trust will not be sufficient to meet future obligations. An actuary can estimate how much money must be set aside today to make expected payouts in the future, given assumptions about likely investment earnings, life expectancy of workers and their dependents after retirement, changes in medical care inflation, changes in the use of services, and other unknowns. Assuming a relatively low health care trend and a relatively high rate of investment return, the trust will be adequate. But any of the assumptions used to estimate the present value of future costs may prove wrong. Most significant, expenditures to maintain promised benefits may be more than anticipated—which is why employers have moved

to reduce the degree of uncertainty about future obligations by imposing caps or limits on what they are willing to spend.

The problem for U.A.W. retirees and workers eligible for retiree benefits is that the assumptions used to generate the estimated liabilities may understate future costs. In estimating the present value of retiree health care liabilities, it was assumed that health care costs would grow at double-digit rates in the near term *and* that the rate of health care change would drop to 5 percent in 2013. In addition, it is assumed that VEBA assets will earn an average annual return of 9 percent.

In light of experience, and the substantial amount of uncertainty about future medical care treatments and their costs, there is a very real risk that health care trends will exceed the relatively low long-term health care trend rate assumption of 5 percent. There is also a very real risk that the relatively optimistic investment returns assumed will not be realized. What that means for retirees is that they will be asked to pay a greater share of costs through higher benefit cost-sharing requirements (e.g., copays and coinsurance) or contributions, or the plans may change health care delivery (e.g., managed care).

Assuming the funding specified in the agreement, there is no guarantee that the assets and investments will be sufficient to secure retiree health benefits at promised levels. The unpredictable increase in health care costs is precisely the risk the companies seek to shift to their retirees under the VEBA agreement.

The Trust Starts Out Underfunded

Not only is the present value of the liabilities subject to substantial uncertainty, but the trust also starts out underfunded. The automakers were interested in funding retiree health care and eliminating their liabilities, but only if they could do so at a substantial discount—which is what they got. As discussed above, calculations of the liabilities and funding levels are based on a complex set of assumptions. Further analysis is needed that accounts for the actual timing of all of the benefit payments,

contributions, and company payments to bridge the gap. Even under the most generous assumptions, however, the VEBA trusts are funded at a level significantly below what will be needed to make future expected payouts under the current benefit plan. Consequently, managers of the trust start out in a hole and need to find ways to bridge the gap between anticipated funding and projected liabilities. They must address this coverage gap, but in a way that does not simply shift costs to workers or restrict their access to care.

The Nature and Timing of the Contributions to the Trust Creates Risk

Another source of risk derives from the nature and timing of the companies' contributions to the trust. The VEBA is said to secure retirees' coverage by funding a trust that will be protected regardless of the company's financial performance. Since retiree medical benefits are often threatened during bankruptcy proceedings, the VEBA offers some increased protection. Rather than risk losing these benefits wholesale in a potential bankruptcy, unions can secure future retiree coverage by placing assets in VEBA trusts, which, if properly structured, are protected from creditors.³⁷

According to union leaders, "retired workers will have their health benefits *secured* by a VEBA....The fund can only be used to pay retiree health benefits and will remain solvent for decades regardless of the financial condition of G.M."³⁸ Other experts agree. Phyllis Borzi, an employee benefits expert at George Washington University, has also observed that workers get an assurance of health care regardless of what happens to G.M. Says Borzi:

"The company gets the liability off its books, and the union has some control over how the money's going to be spent.... Workers get some assurance that they'll have health benefits in retirement, whatever happens in future labor-contract bargaining sessions—and whatever happens to G.M. You wouldn't have the problem of the company going into bankruptcy, and then the retirees' benefits are the first to be canceled."³⁹

But Borzi also notes that the assurance of protection depends on *how* the trust is funded. The nature of G.M.'s contributions is almost as important as the size. As an employee, says Borzi, "I would want cold hard cash—I don't want any employer stock or any of that stuff in there."⁴⁰

One expert who has studied the G.M. Memorandum of Understanding on the VEBA has raised red flags about the deal. Santa Clara University law professor Stephen Diamond maintains that "the argument that the offloading of GM's longstanding and carefully negotiated health care obligations to the VEBA creates a truly independent U.A.W.-controlled entity backed by secure funding is misleading." The fortunes of the trust, he contends, are linked to the fortunes of the troubled carmaker. "If GM collapses into bankruptcy it is very likely that the VEBA will also collapse."⁴¹

Diamond has identified two ways in which the VEBA structure "fails to secure the future health care obligations from the potential risk of G.M. bankruptcy." First, VEBA funding is based heavily on the sale to the VEBA of a convertible note with a face value of \$4.4 billion (which comprises about 15 percent of the VEBA's assets). The problem, he says, is that the note derives its value from the "underlying" common stock into which it can be converted, so its value could be substantially affected by a G.M. bankruptcy. The bond's value would decline significantly in case of bankruptcy, just as the value of G.M. stock declines. In addition, it would have a low priority relative to other creditors and thus would be in danger of not being repaid at all.

In addition, G.M. retains unilateral power to make up to \$7 billion of its potential contributions to the VEBA in cash over a 12- to 20-year period through annual payments. Since these payments are to be made in cash, they depend entirely on the availability of that cash from G.M. But if G.M. declares bankruptcy, there is no guarantee that the cash will be available, or that G.M. will not use the bankruptcy process to shield itself from these future payment obligations. This

compounds the problems associated with the convertible note whose value rises and falls with GM stock, and whose annual interest payment and return of principal could be impaired in bankruptcy.

"In theory," Diamond notes, "the new VEBA will have assets on hand on January 1, 2008, from several sources. However, G.M. can *at its discretion* stage up to \$7 billion of this amount (including the wages/COLA payment, the base payment and the shortfall payments) as far into the future as 2027."⁴²

The situation at Ford is even more precarious. Almost half of the \$13.6 billion Ford agreed to contribute to the VEBA is pledged against Ford shares or assets. That compares with about 14 percent of G.M.'s \$32 billion. According to credit analyst Mark Oline, the Ford funding also "does not achieve one of the primary goals of the U.A.W.—a separation between the financing for retiree health care and the fate of Ford."⁴³

As retirees of Copperweld Steel know, the risks raised by the nature and timing of the financing are real. A VEBA established to provide health benefits to the retirees of Copperweld Steel is now threatened by a bankruptcy proceeding. The 12-year-old VEBA, established in 1995 for retirees of Copperweld Steel, was projected to last 30 years but is running out of funds. Copperweld was purchased by Hamlin Holdings, Inc., in 1995 and renamed C.S.C. Ltd. The new owners promised to provide \$25 million to the VEBA, contributing \$1.4 million a year to the retiree health and life insurance plan. But C.S.C. stopped paying into the VEBA in 2001, when a bankruptcy court approved its request for Chapter 7 liquidation and released the company from its financial responsibility for the retiree program.⁴⁴

Downsizing May Also Undermine VEBA Funding

A final concern is that downsizing by the three companies may undermine VEBA funding. On paper, a significant share of the contributions to the VEBA trusts at each of the three U.S. automakers will come from active U.A.W. workers (see Table 2). The contract requires

workers to forgo some cost-of-living adjustments and wage increases and pass those increases to the VEBA, helping to secure benefits for current retirees and their own health benefits in retirement.

Although workforce trends no doubt were factored in to the estimates of the funding streams—a large share of active workers at each of the three companies is eligible for retirement within five years, for example—workers’ contributions may be lower than anticipated if workforce reductions are larger than anticipated.

In fact, in January 2008, just a few months after the contract establishing the VEBA was signed,

Ford announced that it would offer early retirement and buyouts to all of the company’s 54,000 UAW-represented workers in the United States.⁴⁵ General Motors announced that it would offer retirement incentives to 46,000 workers—nearly two-thirds of its unionized workforce—and then, just weeks later, expanded that offer to all of its 74,000 unionized employees.⁴⁶ Chrysler also offered buyout and early retirement packages to about 13,000 hourly workers as part of an effort to reduce its workforce by 10,000.⁴⁷ With numbers like these, it is easy to imagine that downsizing could reduce the expected contributions from workers and reduce the fund’s expected life.

Box 2. What Are the Lessons of Caterpillar’s VEBA?

Some people point to Caterpillar’s VEBA as an example of how VEBAs can be bad for workers, but that characterization may not be fair. According to press accounts, Caterpillar retirees were forced to absorb substantially higher costs for their retiree health benefits when a VEBA established only six years earlier ran out of funds. That VEBA, however, was always envisioned as a short-term source of funding to mitigate the cost-sharing obligations Caterpillar imposed on its retirees. In fact, the VEBA funds were not exhausted at the next round of contract negotiations.

In 1992, in the midst of a long and contentious labor dispute, heavy-equipment maker Caterpillar unilaterally implemented key changes to active and retiree health care benefits, introducing a health care network and setting monetary limits or “caps” on the amounts Caterpillar would spend on retiree health care. Six years later, in March 1998, the parties finally reached a contract agreement that incorporated the retiree health care reductions. At that time, the company and the union agreed to redistribute approximately \$35 million (from overtime pay and training funds for active employees) to a VEBA to offset expenses retirees incurred above the company-established spending caps. Caterpillar made no promise to provide any additional or future funding to the VEBA, and the trust itself was designed to last roughly six years, until the next contract negotiation.⁴⁸

The fundamental problem for Caterpillar’s U.A.W. retirees was the company’s decision to cap its own contributions to retiree health care. The company funded a VEBA at a relatively modest level to mitigate these cost increases over the period of the collective bargaining agreement. There was an expectation that retiree health care costs would be addressed at the next contract negotiation (six years later in 2004). Had Caterpillar’s retiree health care VEBA run out of funds, retirees and dependents would have been required to pay insurance premiums and other cost-sharing associated with their health plans.

It is notable that, by the time a new contract was negotiated in 2004, a highly profitable Caterpillar had agreed to share with retirees the costs of health coverage above the caps—with the company paying 60 percent of the costs above the cap and retirees paying 40 percent.⁴⁹

Questions for the Future

There is no question that VEBA trusts represent a fundamental change for the automakers and U.A.W. retirees. Yet, many questions remain about how these big new VEBAs will perform, whether others industries are likely to follow, and how the shift toward VEBAs is likely to affect the current debate about the need for comprehensive, national-level health care reform.

How long will the VEBAs deliver promised benefits?

For U.A.W. retirees, the key question for the future is: How long will the VEBA trusts deliver promised benefits? Whether the trusts are adequate to provide current benefits on a lifetime basis depends on whether promised contributions materialize and whether income from the trusts' investments is adequate to meet the rising costs of health care. The VEBA agreements allow retirees' cost sharing to increase by no more than 4 percent per year. However, the agreements also state that the trustees can modify any aspect of the current plans (including retirees' cost sharing) beginning in 2011. The trustees will thus face choices about how to invest the trusts' funds and how to manage health care benefits and costs.

Some have observed that, since the U.A.W. is purchasing health care for 540,000 retirees and spouses, it may be able to use its size to negotiate lower payment rates and design service delivery models that contain costs. However, if the union has no greater ability to contain costs than the automakers did, many UAW retirees will face benefit reductions and cost increases.

Will VEBAs sweep the nation?

A key question for policy makers and analysts is: Are other employers are likely to follow the trend of offloading their retiree health care obligations to VEBAs at discounted values? As unfunded retiree health obligations have grown, many companies with substantial postretirement health care obligations have been looking at shifting responsibility to VEBA trusts. Most of the VEBA activity has been in the context of collectively bargained plans, and that is where the strongest

interest lies—in old-line, unionized industries with highest exposure to retiree health care liabilities.

Indeed, just a few days after the U.A.W.-G.M. deal, another steel industry VEBA was negotiated, this time at AK Steel. Next in line may be telecommunications. The telecommunications sector (dominated by Verizon and AT&T) is better off than the automotive industry (it has a better position on its retiree health care costs with respect to market value and net income), but retiree health care benefits are significantly underfunded, and the retiree health liabilities have become a major issue there as well.⁵⁰ With the new GASB requirements, state and local governments may also be interested in prefunding retiree health care through VEBA trusts.

In general, the push to eliminate retiree health care liabilities from the balance sheet is likely to remain limited outside of the context of collectively bargained plans. Most nonunion employers have limited ability to fund these liabilities quickly. In addition, when employee and employer contributions are combined in a VEBA, all the investment income is subject to tax. Congress could consider loosening some of the restrictions on VEBAs that make them less-than-ideal prefunding mechanisms in the non-collectively bargained context.⁵¹ Additional tax breaks may not generate much interest in advance funding, however. Employers, it seems, have revealed their strong preference to maintain pay-as-you-go financing and limit their liabilities by eliminating coverage, reducing benefits, and shifting costs to workers.

Will VEBAs add fuel to the health care reform debate?

Another question is: Will the VEBA agreements influence the ongoing debate about the need for national health care reform and the shape it should take? In the labor agreements establishing the new auto industry VEBAs, the companies agreed to support efforts to “improve the affordability, accessibility and accountability of the U.S. health care system and the pursuit of a lasting solution to our national health care cost crisis.” The companies will contribute a total \$30 million to

establish a National Institute for Health Care Reform—a think tank “dedicated to understanding, evaluating and developing thoughtful and innovative reform measures.”⁵²

However, the VEBA agreements’ more powerful effect may be that, as part of the continuing coverage erosion, they will add to the growing pressure on the next administration and Congress to address the health care cost and coverage crisis. In subjecting auto industry retirees to the cost shifting and coverage erosion from which they have long been insulated, VEBAs raise the stakes for union retirees in the national health care reform debate. VEBAs will enhance unions’ ability to speak for growing middle-class insecurity and call for solutions that address the needs of those who have far less protection.

Conclusion

Just a few years ago, current and future auto industry retirees might have been counted among

a “relatively privileged minority” insulated from the growing uncertainty many workers and retirees felt about their ability to afford health care in retirement.⁵³ Today, the automakers’ U.A.W. retirees admittedly remain far better off than many retirees with no access to any employer-sponsored health coverage in retirement. Nevertheless, the 2007 VEBA agreements create significant new uncertainties for U.A.W. retirees, risks that their retiree benefits will be reduced significantly if actual future costs have been underestimated or investment returns have been overestimated, or because promised contributions do not materialize. U.A.W. retirees now join the millions of middle-class workers whose retirements have become less secure as a result of the gradual erosion of retiree health benefits that has unfolded over the past two decades. VEBAs have been touted as the latest solution for spiraling retiree health care costs, but retirees will need to pay close attention to the details to determine whether VEBAs are a solution for them and not just a solution for their employers.⁵⁴

Written by Ellen O’Brien
AARP Public Policy Institute
601 E Street, NW
Washington, DC 20049
202-434-3879; e-mail: elobrien@aarp.org
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¹ Teresa Ghilarducci, “The New Treaty of Detroit: Are Voluntary Employee Benefits Associations Labor’s Way Forward, or the Remnants of a Once Glorious Past?” September 2007; accessed from <http://www.irl.berkeley.edu/events/fall07/symposium/ghilarducci.pdf>.

² Micheline Maynard, “Accord on One Key Issue is Reported in G.M. Talks,” *New York Times*, September 22, 2007; accessed from <http://www.nytimes.com/2007/09/22/business/22auto.html?fta=y>.

³ Alex Taylor, “Is G.M. a Growth Stock Again?” *Fortune Magazine*; accessed from http://money.cnn.com/2007/09/13/news/companies/gm_stock/index.htm. In fact, the share price did not double to \$57, as at least one analyst predicted. However, on October 15, 2007, just days after the contract was ratified, the stock closed at \$42.64—a three-year high. The VEBA effect was short-lived; on February 12, 2008, GM’s share price stood at \$27.

⁴ Ford Investor Presentation, November 15, 2007; accessed from <http://sec.gov/Archives/edgar/data/37996/000114036107022122/ex99.htm>.

⁵ Internal Revenue Code, Section 501(c)(9); accessed from <http://www.irs.gov/charities/nonprofits/article/0,,id=154610,00.html>. Section 501(c)(9) establishes VEBAs, trusts that must meet the following requirements: (1) it must be a voluntary association of employees; (2) it must provide for payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries, and substantially all of its operations are for this purpose; and (3) its earnings may not inure to the benefit of any private individual or shareholder other than through the payment of the designated benefits. This common bond may be a common employer (or affiliated employers), coverage under one or more collective bargaining agreements, membership in a labor union, or membership in one or more locals of a national or international labor union.

⁶ VEBAs are defined as not-for-profit organizations that “provide for the payment of life, sick, accident or other benefits to members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual,” Internal Revenue Code, Section 501(c)(9); accessed from <http://www.irs.gov/charities/nonprofits/article/0,,id=154610,00.html>.

⁷ Concern about the use of VEBAs as tax shelters prompted Congress to impose stricter limits in the Deficit Reduction Act of 1984.

⁸ See the discussion of VEBAs and their restrictions under U.S. tax law in *Tax Expenditures: Compendium of Background Material on Individual Provisions*,” Committee on the Budget, U.S. Senate, S. Prt. 109-072, December 2006, pp. 547-554.

⁹ Michael I. Richardson and Daniel R. Salemi, “Funding Postretirement Health Benefits through a VEBA,” *Benefits & Compensation Digest*, September 2007.

¹⁰ *The Retiree Health Care Challenge*, prepared by Hewitt Associates for the TIAA-CREF Institute Symposium, Seeking Remedies to the Retiree Health Care Challenge, November 2006, p. 2; accessed from <http://www.tiaa-crefinstitute.org/research/articles/docs/110106.pdf>.

¹¹ Mark Merlis, “Health Benefits in Retirement: Set for Extinction?” National Health Policy Forum Background Paper, February 8, 2006; accessed from http://nhpf.org/pdfs_bp/BP_RetireeHealth_02-08-06.pdf.

¹² Accessed from <http://www.fasb.org/pdf/fas106.pdf>.

¹³ Accessed from http://www.aon.com/about/publications/pdf/alert/alert_4_5_06.pdf.

¹⁴ Merlis, 2006.

¹⁵ Howard Silverblatt, “S&P 500 2005: Pensions and Other Post Employment Benefits,” June 6, 2006; accessed from http://www2.standardandpoors.com/spf/pdf/index/060606_5OPEB-rpt.pdf?vregion=us&vlang=en.

¹⁶ Neil G. Darling, “Should You Fund Your Retirees’ Health Care?” *Financial Executive*, March/April 1994.

¹⁷ Scott J. Macey, “Critical Crossroads for Retiree Health Care Benefits,” *Financial Executive*, December 2003; accessed from <http://www.thefreelibrary.com/Critical+crossroads+for+retiree+health+benefits-a0111737902>; David Zion and Bill Carcache, *OPEB: The “Other” Retirement Benefits*, Credit Suisse First Boston, September 30, 2003. John Bertko, Memorandum: VEBA’s Used to Transfer Retiree Health Care Liabilities, Rand, October 2007.

¹⁸ Richardson and Salemi, 2007.

¹⁹ On the history of VEBA’s in the tax code, see the IRS manual; accessed from <http://www.irs.gov/irm/part7/ch10s12.html#d0e93003>. The regulations establishing section 501(c)(9) were finalized in 1981, but the predecessors of section 501(c)(9) date to the 1920s and 1930s. On VEBA’s as “hospice care” for workers in declining industries, see: Ghilarducci, 2007.

²⁰ Accessed from http://www.aksteel.com/news/press_release.asp?doc_id=600.

²¹ Accessed from http://dana.mediaroom.com/index.php/press_releases/2118; <http://www.cfo.com/article.cfm/9460922?f=related>.

²² Accessed from <http://www.goodyearnegotiations.com/updates/122906.html>.

²³ Opinion, United States Court of Appeals for the Sixth Circuit, January 17, 2007; accessed from <http://www.ca6.uscourts.gov/opinions.pdf/07a0045n-06.pdf>.

²⁴ Navistar press releases, included in Clarke L. Caywood, ed., *The Handbook of Strategic Public Relations and Integrated Communications*, Mc-Graw Hill, 1997; accessed from <http://books.google.com/books?id=hZkiawtj3igC&pg=PA132&lpg=PA132&dq=navistar+veba&source=web&ots=QtM0HyV-S&sig=XwCfaFAnkWqRfE-RrBVtgA0BHuw>.

²⁵ Paul Gordon, “Proposed Caterpillar Contract Includes Many Improvements over 1995 Offer,” Copley News Service, February 18, 1998.

²⁶ Jeff Green and Elizabeth Hester, “GM, Ford, UAW Dangle \$54 Billion Health Fund Before Wall Street,” November 16, 2007; accessed from <http://www.bloomberg.com/apps/news?pid=20601103&sid=aB6fUFzhhsUY&refer=us>.

²⁷ Uwe Reinhardt, quoted in the *New York Times*, September 15, 2004; accessed from http://www.nytimes.com/2004/09/15/business/15retire.html?_r=1&oref=slogin.

²⁸ Teresa Ghilarducci, 2007.

²⁹ *Ibid.*

³⁰ The Ford VEBA is funded through specified company contributions over the course of the several years—\$30 million in 2006, \$35 million in 2009, and \$43 million in 2011—as well as through active hourly employee contributions through deferrals of portions of future wage and cost-of-living adjustment increases. Accessed from http://media.ford.com/newsroom/release_display.cfm?release=22254.

³¹ See p. 7 of the Settlement Agreement in *Int’l Union, UAW, et al. v. General Motors Corp.*, Civil Action No. 05-73991 (E.D. Mich. Filed Oct. 18, 2005) (the “Henry Case”).

³² The re-measurement of GM's U.S. hourly OPEB plans as of March 31, 2006, generated a \$1.3 billion reduction in OPEB expense and an approximately \$17 billion reduction in the OPEB obligation. See Form 10-Q, Quarterly Report for the Period Ended March 31, 2007, p. 49; accessed from <http://sec.gov/Archives/edgar/data/40730/000095012407002762/k14969e10vq.htm>.

³³ The memorandum of understanding (MOU) establishing the VEBA is subject to the occurrence of several uncertain events in pending litigation, including class certification, settlement and court approval. ... On November 9, 2007, the UAW and certain Ford retirees filed suit against Ford in the Eastern District of Michigan challenging Ford's announced intention to unilaterally alter retiree health benefits and asserting that they have vested rights to those benefits. The parties to the MOU intend to negotiate and arrive at a detailed settlement agreement to effect the transactions contemplated by the MOU. See Ford's SEC 8-k filing; accessed from <http://biz.yahoo.com/e/071115/f8-k.html>. This strategy was used in 2005 and produced the settlement agreement establishing Ford's DC-VEBA.

³⁴ One exception is that the escalation factor set out in the 2005–06 agreements (which capped the annual increase in retiree cost sharing at 3 percent) was raised to 4 percent in the 2007 agreements. Under the VEBA funding projections, the 3 percent cap on inflation increases remains in place through 2015 but increases to 4 percent starting in 2016; accessed from http://www.uaw.org/contracts/07/chrysler/sal/chry_sal05.php.

³⁵ GM Investor Presentation, October 15, 2007 accessed from <http://sec.gov/Archives/edgar/data/40730/000095012407005130/k19262exv10w3.htm>; Ford Investor Presentation, November 15, 2007, accessed from <http://sec.gov/Archives/edgar/data/37996/000114036107022122/ex99.htm>. Because Chrysler is now privately held, it is not subject to the same public reporting requirements as the other two Detroit automakers. For details of VEBA funding, see the U.A.W. Chrysler report, accessed from http://www.uaw.org/contracts/07/chrysler/sal/chry_sal05.php. *Note:* The VEBA funding totals include the present value of payments the companies will make for retiree health care until the VEBA is established (January 1, 2010, or the date on which court approval is received, whichever is later); for example, G.M. will pay an estimated \$5.4 billion for retiree health care in 2008 and 2009; Ford will pay about \$2.4 billion to cover retiree health care costs until the VEBA becomes operational; and Chrysler will pay an additional \$1.5 billion for retiree health care liabilities before the VEBA assumes them in 2010.

³⁶ Bernard Simon, "Mixed reactions to Ford's union deal," FT.com, November 6, 2007.

³⁷ Richardson and Salemi, 2007.

³⁸ UAW GM Report, "New Contract Protects UAW Jobs"; accessed from <http://www.uaw.org/contracts/07/gm/index.php>.

³⁹ Accessed from <http://blogs.wsj.com/health/2007/09/26/gm-uaw-deal-retiree-health-edition/>.

⁴⁰ *Ibid.*

⁴¹ Stephen Diamond, "Legal Implications of Proposed GM/UAW VEBA," October 23, 2007; accessed from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1025001.

⁴² As an example, if GM elects to pay its obligations in those three categories in cash annually, is the MOU projects that in Year Five of the VEBA (2013), GM will owe an annual payment to the VEBA of \$631 million, assuming a shortfall payment is required. If, in that same year, GM wanted to pay down its entire future obligation to the VEBA it would have to pay \$7.3 billion (Diamond, 2007).

⁴³ Jeff Green and Bill Koenig, "Ford's Workers Bear More Health-Fund Risk Than GM's (Update 2)," Bloomberg News, November 21, 2007; accessed from <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a3f8UcRnTTtE>.

⁴⁴ Raymond L. Smith, "Copperweld VEBA Cash Running Out," [Warren, Ohio] *Tribute Chronicle*, October 21, 2007; accessed from <http://futureoftheunion.com/?p=5782>.

⁴⁵ Sarah Webster, "Ford Is Building a Better Buyout," *Detroit Free Press*, January 24, 2008; accessed from <http://www.freep.com/apps/pbcs.dll/article?AID=/20080124/BUSINESS01/801240395>.

⁴⁶ Sharon Terlep, "G.M.s Waggoner: 46,000 Workers to be Offered Buyouts," *Detroit Free Press*, January 18, 2008; accessed from <http://www.detnews.com/apps/pbcs.dll/article?AID=/20080118/AUTO01/801180392>; Nick Bunkley, "G.M. Reports Quarterly Loss of \$722 Million," *New York Times*, February 12, 2008; accessed from <http://www.nytimes.com/2008/02/12/business/12cnd-auto.html?hp>.

⁴⁷ Tim Higgins, "Chrysler Offers Buyouts to 13,000 in Detroit Area," *Detroit Free Press*, January 29, 2008; accessed from <http://www.freep.com/apps/pbcs.dll/article?AID=/20080129/BUSINESS01/801290320>.

⁴⁸ Paul Gordon, "Proposed Caterpillar Contract Includes Many Improvements over 1995 Offer," *Copley News Service*, February 18, 1998.

⁴⁹ Paul Gordon, "Cat Retirees Leery of UAW-GM Deal," *Peoria Journal Star*, September 27, 2007; accessed from http://www.pjstar.com/stories/092707/BUS_BEFNK6LJ.027.php. Caterpillar retirees have filed a class action alleging that Caterpillar unlawfully reduced its employees' retirement medical benefits by denying them the benefits that were offered for years under their union contracts. Plaintiffs allege that Caterpillar unlawfully charged retirees for portions of their medical insurance premiums and unlawfully charged retirees and their surviving spouses increased payments on prescription drugs and medical procedures. The case is pending in the United States District Court for the Middle District of Tennessee in Nashville.

⁵⁰ Howard Silverblatt, S&P 500 Update: Pensions and other Post Employment Benefits, December 19, 2005; accessed from http://www2.standardandpoors.com/spf/pdf/index/121905_500OPEB-report.pdf.

⁵¹ See the discussion of VEBAs and their restrictions under U.S. tax law in *Tax Expenditures: Compendium of Background Material on Individual Provisions*, Committee on the Budget, U.S. Senate, S. Prt. 108-54, December 2004, pp. 479-486.

⁵² Over five years, Chrysler will make a \$10 million contribution to fund the Institute; Ford will contribute \$5 million; and GM, \$15 million. Chrysler UAW Hourly Workers Newsgram, October 2007; accessed from <http://www.futureoftheunion.com/docs/daimlerchrysler/Chrysler101507.pdf>

⁵³ A recent *New York Times* editorial suggested that a "relatively privileged minority" of retirees with company-provided health insurance benefits would be affected by a new federal regulation that allows employers to reduce or eliminate benefits when they turn 65; accessed from <http://www.nytimes.com/2008/01/05/opinion/05sat2.html?scp=1&sq=editorial+health+benefits+and+retirees&st=nyt>. On retirees' and near-retirees' perceptions of retirement risks, see, for example, Society of Actuaries' *2007 Risks and Process of Retirement Survey*. Half of retirees who responded to the survey indicated they were very or somewhat concerned they might not have enough money to pay for adequate health care. Near-retirees were even more concerned, with nearly 70 percent reporting they were very or somewhat concerned about their ability to pay for health care in retirement; accessed from <http://www.soa.org/files/pdf/research-2007-final-retire-risk.pdf>.

⁵⁴ Stephen Taub, VEBA helps AK Steel Resolve Retiree Spat," October 9, 2007, CFO.com; accessed from <http://www.cfo.com/article.cfm/9933555?f=related>.