

Notice 2015-16

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May 12, 2015

CC:PA:LPD:PR (Notice 2015-16)
Room 5203, Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

Re: Notice 2015-16

To Whom It May Concern:

These comments are submitted by the UAW Retiree Medical Benefits Trust (hereinafter called the "Trust") in response to Notice 2015-16 which raises a number of issues related to implementation of Section 4980I of the Internal Revenue Code, the excise tax on high cost employer-sponsored health coverage.

Background

The Trust provides health coverage to retirees and their dependents of the United Auto Workers who formerly worked for GM, Ford, and Chrysler. As of April 1, 2015, the Trust had a total membership of more than 740,000. About 72% of these persons were enrolled in Medicare; 28% are not eligible for Medicare.

The Trust was formed as the result of settlement agreements between the automotive companies and the UAW. Pursuant to those settlements, the Trust received a fixed pool of assets, with no future employer contributions.

With regard to the implementation of the excise tax on high cost employer-sponsored coverage, the Trust seeks to confirm and recommend the following key areas in interpreting Section 4980I:

1. Confirm that plans may combine all pre and post-65 retirees.
2. Confirm that plans may apply the increased threshold for qualified retirees even though they are combining pre and post-65 retirees.

3. Deem persons who are forced to retire prior to age 55 due to disability or ill health to be qualified retirees eligible for the increased threshold.
4. Exclude all limited scope dental and vision coverage, regardless of whether it is insured or self-insured.
5. Exclude all fees, surcharges, and taxes imposed by the Affordable Care Act and any State or local healthcare laws from the cost of coverage.
6. Provide maximum flexibility to plans in applying various provisions.

1. Plans that may combine all pre and post-65 retirees

As the Notice recognizes, Section 4980I(d)(2)(A) states that a plan “may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.” The report issued by the Joint Committee on Taxation on this section confirms that “In determining the coverage value for retirees, employers may elect to treat pre-65 retirees together with post-65 retirees.”

Thus, the Trust requests that Treasury and IRS include language in the proposed regulation that explicitly confirms that plans may combine pre and post-65 retirees for purposes of calculating the cost of their applicable coverage, re-iterating the statutory requirement. The regulations should make clear that this specific rule overrides the general proposition that employees should be separated if they have different benefit options, and instead allows pre and post-65 retirees to be aggregated despite the differences in their benefits.

Furthermore, the Trust urges Treasury and IRS to indicate in the proposed regulations that plans which elect to combine pre and post-65 retirees may aggregate all of these retirees, regardless of whether they are enrolled in an HMO, PPO, or a Medicare Advantage plan. It would be contradictory to require disaggregation of retirees based on these less significant differences in benefit options, when the statute specifically allows for aggregation of pre and post-65 retirees.

2. Increased threshold for qualified retirees even though they are combining pre and post-65 retirees

The Notice also recognizes that Section 4980I(b)(3)(C)(iv) provides an increase in the dollar limits for “qualified retirees” who have attained age 55 and are not entitled to benefits or eligible for enrollment under Medicare. The Trust urges

Treasury and IRS to include language in the proposed regulations confirming that these increased thresholds apply to qualified retirees in situations where a plan has elected to combine pre and post-65 retirees for purposes of calculating the cost of applicable coverage.

Nothing in the statute or committee report suggests that qualified retirees should lose the benefit of the increased thresholds just because their plan has elected to combine them with post-65 retirees. To the contrary, footnote 8 in the Notice implies that the higher thresholds should still apply in this situation.

The Trust also urges Treasury and IRS to apply the increased threshold to the surviving spouses of qualified retirees. That is, if a surviving spouse is at least age 55 and not eligible for Medicare, he or she would be treated the same as a qualified retiree.

3. Increased Threshold for Early Retirees Forced to Retire Prior to Age 55 Due to Disability or Ill Health

The Trust urges Treasury and IRS to allow persons who retire involuntarily prior to age 55 as the result of a proven disability or ill health to be deemed qualified retirees who are eligible for the increased threshold. Many pension plans recognize these disability-driven retirements as a separate category, often called “disability retirements,” with enhanced benefits available to persons who demonstrate total and permanent disability status. In such cases, the early retirement is not a voluntary decision. Moreover, these individuals are likely to have significantly higher health care costs. Thus, the rationale for the increased threshold for qualified retirees is equally applicable to these persons.

4. Limited Scope Dental and Vision Benefits

The Trust strongly urges Treasury and IRS to exclude all limited scope dental and vision benefits from the cost of applicable coverage, regardless of whether the coverage is insured or self-insured. As indicated in the Notice, whether coverage is insured or self-insured is generally not relevant for purposes of Section 4980I, including identifying whether any particular coverage is applicable coverage. The Trust holds a view consistent with the Notice that the contractual structure and funding methodology does not change the basic reason for excluding these benefits as not medical or drug coverage. Furthermore, Treasury and IRS, along with the Department of Labor and the Department of Health and Human Services, have already adopted this approach in the recent amendment to the excepted benefits

regulations under Section 9831 in order “to achieve greater consistency between insured and self-insured coverage.” The Trust believes both of these are cogent arguments that fully support the exclusion of all limited scope dental and vision benefits from the cost of applicable coverage.

5. Treatment of Taxes and Fees

The Trust urges Treasury and IRS to exclude from the cost of coverage all taxes, surcharges, assessments, and fees imposed on plans by the Patient Protection and Affordable Care Act or by State or local laws that tax the provision of health coverage. This exclusion should not be limited just to the excise tax on high cost plans. The exclusion should extend to all taxes and fees, including the taxes for the Patient-Centered Outcomes Research Trust Fund and the Health Insurance Providers fee. Whatever the policy rationales for the taxes and fees, they do not reflect the cost of actually providing health coverage. Also, plan sponsors do not have any control over the taxes and fees. Thus, there is no justification for including these taxes and fees in the cost of coverage.

6. Flexibility in Applying Excise Tax Provisions

The Trust urges Treasury and IRS to give plan sponsors maximum flexibility in applying various provisions related to the excise tax on high cost plans. This is justified because of the considerable diversity in plan characteristics. It also will help to reduce administrative burdens and costs for plan sponsors. This is especially important for the Trust, because it has a limited amount of resources to accomplish its mission of providing affordable health coverage to retirees and their dependents.

The Trust would ask for flexibility in the following areas:

A) In disaggregating employees or retirees based on whether they have self-only coverage or other than self-only coverage, plans should not be required to separate employees enrolled in other than self-only coverage based on the number of persons actually receiving such coverage. Instead, they should be able to include everyone receiving coverage for more individuals than just themselves. The Trust also urges Treasury and IRS to clarify how plans should address mid-year and retroactive changes to that status.

B) The actuarial basis method for determining the cost of applicable coverage in a self-insured plan should simply use a broad standard that requires “reasonable

actuarial principles and practices,” rather than specifying a list of factors. While the person making the actuarial estimate should have to be accredited by the Society of Actuaries or the American Academy of Actuaries, the Trust believes the standards of the actuarial profession are sufficient to guard against abuses. Requiring compliance with a list of factors would increase administrative burdens and costs unnecessarily.

C) In using the past cost method to determine the cost of applicable coverage, self-insured plans should be given considerable flexibility in choosing the 12 month measurement period. The Trust believes the approach suggested in the Notice would provide such flexibility.

D) In using the past cost method, plans should be given flexibility to include either claims paid or claims incurred (not claims incurred or submitted as suggested in the Notice). This flexibility is important to reflect the diversity of record keeping practices in different plans, and to reduce administrative burdens for plan sponsors.

E) Plans should have the flexibility to change their approach in determining the cost of coverage in situations where there has been a change in the plan design. For example, due to changes in the plan design, the past cost method might no longer be relevant or appropriate in determining the cost of coverage. Plans should have the flexibility to reflect the most relevant approach in updating their cost of coverage. Otherwise, it would be unfair to lock a plan into continuing to have to use a pre-selected approach.

Conclusion

If Treasury or IRS would like to discuss any of the comments contained in this submission in more detail, the Trust would be pleased to engage in a further dialogue on these matters.

Respectfully submitted,



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Executive Director
UAW Retiree Medical Benefits Trust