

**Automotive Industries Pension Plan
Checklist Item #20**

Does the application describe how the plan sponsor took into account – or did not take into account – the factors listed in section 5.02 in the determination that all reasonable measures were taken to avoid insolvency?

See section 5.03.

Yes. The documentation is attached as Document No. 20.1.

Section 5.02(1)(a) Contribution levels.

The Trustees have taken all reasonable measures with respect to contribution rates. For collective bargaining agreements effective on or after May 8, 2008 the Trustees prohibited any decrease in the contribution rate while the Plan is in Critical Status.

However, the Trustees determined that it was not feasible to increase the contribution rates. Employers contribute to the Plan pursuant to over 160 separate bargaining agreements. Each increase in the pension contribution would be subject to separate negotiations. Employers had already indicated the difficulty imposed by the Rehabilitation Plan supplemental contributions and were not agreeable to contribution increases. *See Decl. of D. Crosatto*, Document No. 19.2, ¶¶ 6-7, 12. Increasing the contribution rates, coupled with the cumulative supplemental contributions imposed by the 2012 Rehabilitation Plan update, would cause substantial hardship on employers and increase the risk of future substantial withdrawals. The Trustees considered the risk of future substantial withdrawals, the difficulty collecting withdrawal liability from insolvent entities and the potential adverse impact of such withdrawals. *See discussion re Section 5.02(1)(e), Measures Undertaken by the Plan Sponsor to Retain or Attract Contributing Employers*, Document No. 19.1, pp. 19.1.2 – 19.1.4.

Moreover, active participants preferred that any increase negotiated above the existing contribution rate should be bargained into alternative retirement vehicles, such as an individual account plan or a different pension plan with a higher benefit accrual rate. *Crosatto Decl.*, Document No. 19.2, ¶ 13.

Accordingly, the Trustees concluded that higher contribution rates could not be supported without substantial risk of employer withdrawals and would not be a reasonable measure to take to avoid insolvency.

Section 5.02(1)(b) Levels of benefit accruals, including any prior reductions in the rate of benefit accruals.

The Trustees reduced the accrual rate to 3% for contributions on or after July 1, 2003. As the Plan's funding status continued to decline, the Trustees again amended the Plan to further reduce benefit accruals. Effective January 1, 2005, the Trustee's prospectively reduced the accrual rate to 0.50% for the portion of monthly contributions less than or equal to \$250, 1% for the portion of monthly contributions between \$250 and \$500 and 2% for the portion of monthly contributions exceeding \$500.

As a part of the Rehabilitation Plan, the default schedule benefit accrual rate was fixed at 1% effective for contributions after July 1, 2008. The benefit accrual rate has remained at 1% since July 1, 2008. The 1% accrual rate is the lowest legally permissible accrual rate for a default schedule under the Pension Protection Act.

The active participants had already lost adjustable benefits under the Rehabilitation Plan and had expressed desire for alternative retirement plans, such as the International Plan and 401(k) plans. The Trustees determined that further reductions in the benefit accrual rate below 1% would decrease an already low level of participant support for the Plan.

Section 5.02(1)(c) Prior reductions, if any, of adjustable benefits under section 432(e)(8).

As the Trustees eliminated all adjustable benefits upon the implementation of the 2008 Rehabilitation Plan and the 2012 Rehabilitation Plan update, there were no other measures to be taken to avoid insolvency.

Section 5.02(1)(d) Any prior suspension of benefits under § 432(e)(9).

The Trustees have not applied for any prior suspension of benefits under Section 432(e)(9).

Section 5.02(1)(e) Measures undertaken by the plan sponsor to retain or attract contributing employers.

As discussed in Document No. 19.1 in response to Section 5.02(1)(e) (pp. 19.1.2 – 19.1.4), in order to attract or retain contributing employer, the Trustees implemented the free look rule and reduced the employer supplemental contribution rate to 5.0% as part of the 2012 Rehabilitation Plan update.

The Trustees were convinced that the 12.5% cumulative supplemental employer contribution would cause the three largest contributing employers to pull out of the Plan and that if those employers left, the smaller employers would follow suit, leading to a mass withdrawal. In light of these factors, when it came time to update the Rehabilitation Plan in 2012, the Trustees determined that a maximum cumulative surcharge of 5% would allow the Plan to retain contributing employers and discourage withdrawals thereby allowing the Plan to maintain or possibly improve its funding status and forestall insolvency as long as possible. The Trustees believe that the 5% cumulative surcharge remains the maximum surcharge that employers will bear and stay in the Plan. *Crosatto Decl.*, Document No. 19.2, ¶¶ 9-10.

This MPRA application is itself a measure to retain existing contributing employers. Some contributing employers indicated that, prior to the enactment of MPRA, they were considering withdrawing from the Plan. Employer withdrawals from the Plan would hasten its insolvency. The possibility of the Plan avoiding insolvency with a benefit suspension has had a calming effect on employers desire to leave the Plan. *Crosatto Decl.*, Document No. 19.2, ¶ 12.

Section 5.02(2) The impact on plan solvency of the subsidies and ancillary benefits, if any, available to active participants.

There are no longer any subsidies or ancillary benefits available to active participants.

Section 5.02(3) Compensation levels of active participants relative to employees in the participants' industry generally.

In the Plan's geographic area, industry competition has impeded wage growth. *Crosatto Decl.*, Document No. 19.2, ¶ 15. The increase in the pension costs has come out of the non-pension portions of the total compensation package and led to slower wage growth for participants.

The increasing portion of pension contributions that are being used to pay unfunded pension obligations has led to a decline in support for the Plan among active participants who now seek alternatives to the Plan. *Crosatto Decl.*, Document No. 19.2, ¶ 13. The Trustees believed that efforts to increase pension contributions could lead to further downward pressure on union wages and a further decline in support for the Plan among active participants.

Section 5.02(4) Competitive and other economic factors facing contributing employers.

The decline over the last 10 years in the domestic automotive industry coupled with the economic recessions over the last 15 years have had a great impact on the businesses, especially automotive related businesses, in the Union's jurisdiction. Plan employers are engaged in a fragmented, competitive industry and have higher labor costs. Many of the local auto dealerships and retail parts shops in the San Francisco Bay Area have closed, which employed a significant portion of our participants. The Trustees considered these competitive factors and decided that with the industry in its present condition, contributing employers, as a whole, could not bear additional increases to their cost of labor beyond that implemented by the Rehabilitation Plan. Further increases could lead to the bankruptcy and/or withdrawal of employers from the Plan, which would harm the Plan's financial situation and hasten its insolvency. *Crosatto Decl.*, Document No. 19.2, ¶¶ 2-3, 6-7, 10.