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Letter of Comment No: | File Reference: FSPFAS106A

December 19, 2003

Mr. Larry Smith Director, TA&I -- FSP Financial Accounting Standards Board 401 Merritt 7 Norwalk. CT 06856-5116

Re: File Reference FSP FAS 106-a

Dear Mr. Smith,

General Motors Corporation (GM) appreciates the opportunity to comment on the Financial Accounting Standards Board's (the "Board") Exposure Draft of the FASB Staff Position (FSP), Accounting and Disclosure Requirements Related to the Medicare Drug, Improvement and Modernization Act of 2003 (the Medicare Act).

We understand that the legislation was issued in early December and is over 900 pages long, and that many companies have not been following the development of the legislation as closely as a company like GM, with a postretirement employee benefit obligation of approximately \$60 billion. What we don't understand is why this Act is different from any other law that is issued, where the impact must be considered in the measurement and disclosure in the financial statements as of the date of enactment. We all know that legislation is often very difficult to understand upon its issuance, but companies have always been expected to make their best estimate and effort to comply-Sarbanes Oxley is a perfect example. For that matter, the FASB in recent times has released new standards or interpretations that become effective before companies can comprehend the full impact of their issuance, yet companies are expected to make their best estimate and effort to comply, even with the knowledge that further interpretations will be required—FIN 46 is a perfect example. With that said, we applaud the fact that the FASB will be issuing guidance on how to account for the requirements under the Medicare Act. However, we disagree with the FASB Staff's conclusion that we should not account or disclose the impact of the Medicare Act for the reasons that "(1) certain accounting issues raised by the Act may not be explicitly addressed by Statement 106, and (2) significant uncertainties presently exist both as to eventual regulations required to implement the Act and the Act's overall effect on plan participants' behavior and health care costs.

To begin with, the FASB Staff indicates that certain accounting issues ralsed by the Act may not be explicitly addressed by SFAS No. 106. In this day and age, companies deal with accounting issues every day that are not "explicitly" addressed in the accounting literature. It is clear that this will continue to be the case as we try to move toward more principles-based standards. That aside, we believe that SFAS No. 106 can be interpreted as it exists today to address how to account for the Medicare Act. Paragraph 35 and 36 state that:

"In principle, an employer's share of expected future postretirement health care cost for a plan participant is developed by reducing the assumed per capital claims cost...by (a) the effects of coverage by Medicare and other providers of health care benefits, and (b) the effects of the cost-sharing provisions of the plan (deductibles, copayment provisions, out-of-pocket limitations, caps on the limits of the employer-provided payments, and retiree contributions). The resulting amount represents the assumed net incurred claims cost...The assumed per capita claims cost shall be the best estimate of the expected future cost of the benefits covered by the plan." (emphasis added)

We consider the subsidy under the Medicare Act to be very similar to a copayment provision or other provisions impacting a plan that should be considered in the measurement of the postretirement obligation.

The FASB Staff's position that significant uncertainties presently exist both as to eventual regulations required to implement the Act and the Act's overall effect on plan participants' behavior and health care costs is clear through its statement that: "However, the Act introduces two new features to Medicare that *may* impact those measurements: (1) a subsidy to a plans sponsor based on 28% of the plan's share of an individual beneficiary's annual prescription drug costs between \$250 and \$5,000, and (2) the opportunity for a retiree to obtain a prescription drug benefit under Medicare."

Our understanding of these uncertainties is based on the fact that:

- The 28% subsidy depends on whether the plan's prescription drug benefit is at least "actuarially equivalent" to the Medicare Part D benefit, but the exact regulations detailing that definition have not been released.
- 2. The magnitude of the subsidy is based on how many Medicare-eligible plan participants choose not to enroll in the *voluntary* Medicare Part D plan.
- The regulations regarding documentation and payment/reimbursement have not been set vet.

Because of these issues, the FASB Staff has stated that they believe it is unclear whether the subsidy is substantively similar to other Medicare benefits that existed at the time SFAS No. 106 was issued. The FASB Staff appears to have a concern that there isn't enough known about the Medicare changes and nature of the subsidy to determine if they should have an impact on individual plans. However, in SFAS No. 106, there was no direct mention of specific payments, coverage, or other factor within Medicare. All that was mentioned was that projected costs and trends should be adjusted for Medicare coverage. While it's possible that employers may make changes to their plans to comply with the Medicare Act, that is really no different than making changes to the plan for other economic reasons (i.e., reduction of benefits to reduce cost). As such, it should not be treated any differently. As we mentioned above, we strongly believe it should be taken into consideration as part of a company's SFAS No. 106 measurement. If it is considered a cost reduction, then clearly it would affect the APBO and assumptions. If not, then it is similar to a change impacting an employee's co-pay on insurance premiums. Regardless, it would still be taken into consideration when making the assumptions under SFAS No. 106

The three issues summarized above are unknowns for many companies at this time. However, for some companies, many of these factors can be reasonably and reliably estimated. For example, for GM, actuarial equivalency is not an issue because GM's benefits are much more lucrative than the Medicare Part D benefit. Because of that fact, GM can make a good estimate of the number of participants who would choose not to enroll in the *voluntary* Medicare Part D plan.

SFAS No. 106 clearly requires numerous assumptions be made in measuring the postretirement benefit obligation and future expense. All estimates are assumed to be based on the company's best estimate of future cost based on existing information and circumstances. Most companies use some sort of actuarial services to calculate their postretirement benefit obligation. Actuarial firms use health cost trends, calculated figures and numerous assumptions in their calculations. The unknowns mentioned above are just additional items for which a company will have to provide estimates when measuring its obligation and expense. These are no different than other assumptions made within SFAS No. 106.

In summary, generally accepted accounting standards have always required presently enacted changes in the law to be taken into account in the measurement and disclosures in financial statements. SFAS No. 106 clearly requires significant estimates to be made when measuring the obligations and expense. The unknown factors surrounding the legislation do impact a company's postretirement benefit obligation and expense, and are similar to other factors currently taken into consideration in the measurements under SFAS No. 106 (i.e., other Medicare coverage and employee co-pays). For many companies, these items can be reasonably estimated. If this is the case, a company should not be prohibited from consideration of the Medicare Act in the measurement of its obligations and disclosures. Disclosure alone is not an adequate substitute for good accounting. For those companies who cannot estimate the impact of the legislation, disclosure of that fact and deferral of the adoption should be allowed until a later date.

If the FASB decides not to change the guidance in the FSP to allow companies to estimate the impact of the legislation on their obligations and future expense for year-end 2003 financial statements, the FASB should indicate when it expects to issue final guidance surrounding this issue, and the accounting should be retroactive to the beginning of 2004. It is important to issue final guidance on this matter as soon as possible, preferably by the end of the first quarter of 2004.

We would be happy to discuss any questions you may have surrounding these issues, as well as share our calculations of the impact of the Medicare Act on our postretirement benefit obligation and future expense with you. Representatives of GM would be pleased to meet with the staff to review these calculations.

Sincerely,

Peter R. Bible Chief Accounting Officer